

BEFORE THE
ILLINOIS COMMERCE COMMISSION

COVAD COMMUNICATIONS COMPANY)DOCKET NO.
)00 -0312
Petition for Arbitration Pursuant to)(CONSOL.)
Section 252(b) of the Telecommunications)
Act of 1996 to Establish an Amendment)
for Line Sharing to the Interconnection)
Agreement with Illinois Bell Telephone)
Company, d/b/a Ameritech Illinois, and)
for an Expedited Arbitration Award on)
Certain Core Issues.)

RHYTHMS LINKS, INC.)DOCKET NO.
)00 -0313
Petition for Arbitration Pursuant to)
Section 252(b) of the Telecommunications)
Act of 1996 to Establish an Amendment)
for Line Sharing to the Interconnection)
Agreement with Illinois Bell Telephone)
Company, d/b/a Ameritech Illinois, and)
for an Expedited Arbitration Award on)
Certain Core Issues.)

ON REHEARING

Springfield, Illinois
January 5, 2001

Met, pursuant to adjournment, at 10:00 A.M.

BEFORE:

MR. DONALD L. WOODS, Examiner

SULLIVAN REPORTING COMPANY, by
Cheryl A. Davis, Reporter, #084 -001662

1 APPEARANCES:

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6 (Appearing on behalf of Covad
7 Communications Company and Rhythms
8 Links, Inc.)

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10 227 West Monroe
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12 Chicago, Illinois 60606

13 (Appearing on behalf of Covad
14 Communications Company)

15 MR. STEPHEN P. BOWEN
16 Blumenfeld & Cohen
17 4 Embarcadero Center
18 Suite 1170
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20 (Appearing on behalf of Rhythms Links,
21 Inc.)

22 MR. CHRISTIAN F. BINNIG
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5	JOSEPH P. RIOLO				
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1 PROCEEDINGS.

2 (Whereupon prior to the
3 hearing Rhythms Cross
4 Exhibit I was marked for
5 identification.)

6 EXAMINER WOODS: We're back on the record in
7 00-0312/00-0313, petitions for arbitration of Covad
8 and Rhythms Links on rehearing.

9 Ms. Chapman has previously been sworn.
10 Her direct testimony was introduced, and she is
11 prepared for cross-examination.

12 We have the same appearances I believe
13 as we had yesterday. The Court Reporter is
14 directed to enter the appearances as if they were
15 given orally.

16 (As directed, the appear-
17 ances were entered by the
18 Court Reporter as follows:)

19 MS. HIGHTMAN: Carrie J. Hightman, Schiff,
20 Hardin and Waite, 6600 Sears Tower, Chicago,
21 Illinois 60606, appearing on behalf of Rhythm
22 Links, Inc. and Covad Communications Company.

1 MR. BOWEN: Steven P. Bowen, Blumfeld and
2 Cohen, 4 Embarcadero Center, Suite 1170, San
3 Francisco, California 94111, appearing on behalf
4 Rhythms Links, Inc.

5 MS. FRANCO-FEINBERG: Felicia Franco-Feinberg,
6 appearing on behalf of Covad Communications
7 Company, 227 West Monroe, 20th Floor, Chicago,
8 Illinois 60606.

9 MR. BROWN: Craig J. Brown, appearing on
10 behalf of Rhythms Links, Inc., 9100 East Mineral
11 Circle, Englewood, Colorado 80112.

12 EXAMINER WOODS: Respondents.

13 MR. BINNIG: Christian F. Binnig and Kara K.
14 Gibney of the law firm of Mayer, Brown & Platt, 190
15 South La Salle Street, Chicago, Illinois 60603,
16 appearing on behalf of Ameritech Illinois.

17 EXAMINER WOODS: On behalf of Staff.

18 MR. HUCKMAN: On behalf of Staff, Andrew G.
19 Huckman, Office of General Counsel, Illinois
20 Commerce Commission, 160 North La Salle Street,
21 Suite C-800, Chicago, Illinois.

22 EXAMINER WOODS: Mr. Binnig.

1 MR. BINNIG: Ms. Chapman is available for
2 cross, Your Honor.

3 EXAMINER WOODS: Mr. Bowen.

4 MR. BOWEN: Thank you, Your Honor.

5 Before I do that, I would indicate for
6 the record that I have passed out, as I said I
7 would, photocopies of that Project Pronto
8 collaborative meeting handouts. What's your
9 preference about when to move the admission of
10 this? Now or later? Do you have a preference?

11 EXAMINER WOODS: We might as well do it now.

12 MR. BOWEN: Okay. We'd move -- I think we're
13 up to H.

14 MS. HIGHTMAN: No, I.

15 EXAMINER WOODS: Or I.

16 MR. BOWEN: I actually. We'd move -- I'll
17 describe it for the record. This is a -- I've
18 numbered the pages myself, just for the record, in
19 the lower right-hand corner sequentially because
20 the document consists of four separate presentation
21 handouts, so it's a cover page and 63 numbered
22 pages.

1 And I also note for the record that the
2 second presentation, running from pages 25 -- my
3 pages number 25 through 29, has a stamp at the
4 bottom that says proprietary -- actually it's more
5 than that. It's 16 through 29 has a footer that
6 says Proprietary and Confidential. As we
7 established in Texas and as it was said at the
8 meeting itself, that stamp was not suppose to be
9 there. The presenter herself said that, and SWBT
10 in Texas agreed these pages were not actually
11 confidential.

12 So with those clarifications, we would
13 move the admission of the document titled Pronto
14 Industry Collaborative, October 24, 2000, as Cross
15 Exhibit I, nonproprietary.

16 MR. BINNIG: We do object, Your Honor, on the
17 grounds that there is no foundation for what the
18 substance of this document means or was intended to
19 represent. The only witness that it was used with
20 was a witness who had never seen it before, never
21 talked to any of the authors, could read words off
22 the page but couldn't say what the document was

1 intended to mean, how it was used, so we object
2 that there is no foundation for admission of the
3 document.

4 MR. BOWEN: Well, Your Honor, yesterday
5 Mr. Binnig expressly agreed that he was not
6 challenging the authenticity of the document. The
7 fact that Mr. Lube was not at the meeting and
8 hadn't seen the document before is not relevant
9 here. This is by admission of the company an
10 authentic document, and it speaks for itself in
11 terms of what is in there. Mr. Lube, in fact,
12 didn't know nor did Mr. Keown, although they
13 perhaps might have been expected to, what the
14 company's actual plans were for deploying things
15 like different quality of service classes. This
16 document, in fact, was the presentation of the
17 company to all invited CLECs on Project Pronto
18 capabilities in Dallas on the date so specified.
19 So since there is no challenge to the authenticity,
20 there needs to be no foundation laid because
21 Mr. Lube himself agreed that the document spoke to
22 the issues I was crossing him on.

1 MR. BINNIG: No, there does need to be a
2 foundation laid for what the document means, how it
3 was used. You know, the proper way, if Mr. Bowen
4 wanted to use this document, and he's apparently
5 had it for some time, would have been to put on his
6 own witness who sponsored the document, who
7 attended the sessions where this document has been
8 represented as being handed out. That hasn't
9 happened here, and there's just no foundation for
10 it. I'm not contesting the authenticity.

11 EXAMINER WOODS: At this point what I'm
12 willing to do is to admit into the record the pages
13 with which Mr. Lube was cross-examined, and I guess
14 we can keep this if you just want to move it in,
15 and we'll note I'm sure your objection to my
16 ruling. We'll have it in the record, but I think
17 the only part that will be considered in the
18 consideration of this case will be the pages that
19 you used to cross-examine Mr. Lube on.

20 MR. BOWEN: All right. I would point out --

21 EXAMINER WOODS: Could you point out that
22 page, please?

1 MR. BOWEN: I'm looking for it right now.

2 EXAMINER WOODS: Me too.

3 MR. BOWEN: I believe it's page 37 in my
4 numbering.

5 EXAMINER WOODS: That's my recollection as
6 well.

7 MR. BOWEN: Although I note that page 38 also
8 refers to CBR and VBR real-time quality of service
9 classes on the AFC platform.

10 I guess I would respectfully take
11 exception to the partial admission of that page
12 into the record on the basis that, as I said,
13 Ameritech should not be allowed to present expert
14 witnesses who are not expert in the topics which
15 they're suppose to be. They've done this before in
16 Texas. They're doing it here again now, and, you
17 know, if they're going to present a witness on
18 Project Pronto or two witnesses on Pronto who
19 supposedly know all there is to know that's
20 relevant to our issues here about Pronto and they
21 don't know about this document, then the document
22 itself should come in because this is, in fact, a

1 presentation by Ameritech.

2 And I'll make an offer of proof, having
3 attended myself that meeting, that, in fact, the
4 leader of the meeting represented that they didn't
5 want to talk about the regulatory issues at all in
6 that meeting. They wanted to put those, as she put
7 it, in the parking lot, and there's a transcript of
8 this, and she wanted to talk about the
9 capabilities, the engineering capabilities and the
10 offerings of the so-called wholesale Broadband
11 Service, and that's what we spent a day doing. So
12 if these witnesses don't know about it, have never
13 heard of it, can't speak to the issues of the
14 future development of Pronto that this document
15 contains, then frankly shame on them, but the
16 document should come in. So I'll make an offer of
17 proof that the entire document, the four
18 presentations herein, are Ameritech's public
19 representations of Pronto's capability and should
20 therefore be admitted.

21 EXAMINER WOODS: Okay. The offer of proof is
22 noted. Again, the ruling stands. Page 37, and

1 upon review of the transcript, if, in fact, page 38
2 was referred to in the cross-examination of
3 Mr. Lube, will be the only parts that are
4 officially made a part of the record in this
5 docket.

6 I agree with Mr. Binnig that the manner
7 in which this should have been brought in is a
8 sponsoring witness. I think to the extent that it
9 perhaps impeaches the testimony of the Ameritech
10 witnesses would simply go to the weight to be
11 addressed their testimony. I don't think this
12 document by itself without a sponsoring witness is
13 anything more than hearsay, so that's the ruling.

14 (Whereupon Rhythms Cross
15 Exhibit I, pages 37 and
16 possibly 38, were received
17 into evidence.)

18 MR. BINNIG: And I would still note that I
19 object to the admission of any pages in the
20 document.

21 EXAMINER WOODS: That's noted.

22 MR. BINNIG: Okay.

1 EXAMINER WOODS: Mr. Bowen.

2 MR. BOWEN: Thank you, Your Honor.

3 CAROL A. CHAPMAN

4 called as a witness on behalf of Ameritech
5 Illinois, having been previously duly sworn, was
6 examined and testified as follows:

7 CROSS EXAMINATION

8 BY MR. BOWEN:

9 Q. Good morning, Ms. Chapman.

10 A. Good morning.

11 Q. You filed three rounds of rehearing
12 testimony. Is that right?

13 A. Yes.

14 Q. Did you file testimony in the case
15 below?

16 A. I'm sorry?

17 Q. Did you file testimony in the case
18 below, the actual arbitration?

19 A. In the original, no, I did not.

20 Q. Were you asked to file testimony in the
21 proceeding below?

22 A. No. I believe one of my colleagues did,

1 but I did not.

2 Q. Okay. Let me ask you the same question
3 I asked Mr. Keown and Mr. Lube. What has changed
4 between last spring and now concerning Project
5 Pronto that you're aware of, if anything?

6 A. That I'm aware of, the RP size
7 modifications that we have agreed to, the
8 commitments that were part of the merger
9 conditions, and then, as Mr. Lube and I believe
10 Mr. Keown both mentioned, I believe the OCD vendor,
11 but that's not something that I'm really involved
12 in.

13 Q. Okay. Anything besides that,
14 Ms. Chapman?

15 A. Well, we're developing new products, new
16 versions of the Broadband Service, but as far as
17 the architecture, is that what your question is?

18 Q. Yes.

19 A. No.

20 Q. All right. Can you turn back to page 8
21 of your direct testimony, which I think is Exhibit
22 8.0?

1 A. Okay.

2 Q. And if you could just glance at the
3 question that starts at page 7 and continues to
4 page 8 and the answer thereto. The context here is
5 you're being asked to address the wholesale
6 Broadband Service. Is that right?

7 A. The context of that question?

8 Q. What you're talking about here on these
9 two pages is describing the wholesale Broadband
10 Service and some of the reasons why you've chosen
11 to offer it. Is that right?

12 A. I don't think that's really what the
13 question on the bottom of 7 and the top of 8 is
14 talking about. It's more talking about how
15 offering things that go above and beyond the
16 requirements of the law are a step in the right
17 direction.

18 Q. Okay. Do you understand Rhythms'
19 recommendation in this case to be that Ameritech
20 should not be allowed to offer the wholesa le
21 Broadband Service?

22 A. I understand that that is part of their

1 recommendation, that it should not be able to be
2 offered as a Broadband Service.

3 Q. Which witness said that? Which witness
4 said that you should not be allowed to offer a
5 service of your choice?

6 A. Maybe I misunderstood your question.
7 What I understood your question to be was that we
8 would not be able to offer -- that instead of
9 offering it as a service to CLECs, it needed to be
10 offered as UNES. That is how I understood your
11 question. If that's not what you meant, I don't
12 understand what you're saying.

13 Q. No witness for Rhythms said instead of ,
14 did they?

15 A. I don't recall one way or the other if
16 they said instead of. I would have to go back
17 through and look through all the testimony, which
18 would take all day, so.

19 Q. Well, sitting here today, isn't it
20 correct that Rhythms is recommending that you be
21 required to offer Project Pronto as UNES without
22 saying instead of wholesale Broadband Service, but

1 instead in addition to what you might choose to do
2 voluntarily as a service?

3 A. I can't say that. I just said I don't
4 know if you said instead of or in addition to. I
5 don't recall anything of being in addition to, but
6 it may have been. I do know that you've asked for
7 UNEs.

8 Q. Okay. Well, I read your testimony to be
9 assuming that we're saying instead of, as you
10 answer it. Isn't that a fair reading of your
11 testimony?

12 A. Not exactly, no, because even if we were
13 free to offer it as a service and a UNE, that still
14 is imposing new requirements on us that currently
15 don't exist.

16 Q. Are you aware of any FCC order -- and
17 you are familiar with FCC orders I know because you
18 cite them so frequently. Are you aware of any FCC
19 order that says Project Pronto has to be offered
20 either as a UNE or as a wholesale service?

21 A. No.

22 Q. Okay. So there would be no regulatory

1 prohibition that you're aware of that would force a
2 choice of one or the other, and, in fact, it could
3 be both, couldn't it?

4 MR. BINNIG: I'm going to object. It calls
5 for a legal conclusion.

6 MR. BOWEN: Well, Your Honor, this witness
7 especially spends immense amounts of time
8 interpreting the FCC orders as a lawyer would in a
9 brief, and I think it's completely inappropriate
10 for Mr. Binnig now to raise an objection that my
11 questions are calling for a legal conclusion. I
12 will ask the witness, who is not a lawyer, to
13 testify as to her apparent broad regulatory
14 knowledge and not as a lawyer.

15 EXAMINER WOODS: She can answer.

16 A. Could you repeat the question?

17 Q. Given your answer that you're not aware
18 of any FCC prohibition or instruction to offer
19 Project Pronto either as UNEs or as a wholesale
20 Broadband Service, isn't it fair to say that
21 Ameritech Illinois would be able to offer both from
22 a regulatory perspective?

1 A. That's probably true. I don't think
2 that's the issue here.

3 Q. Okay. In fact, doesn't the Act itself
4 contemplate two different ways of serving, one
5 being resale and one being UNEs?

6 A. Yes, I'm aware that those are two ways
7 that are available to CLECs.

8 Q. So think of your current service. Let's
9 think of a regular, old voice service. A carrier
10 can offer that via resale right now, right?

11 A. Uh-huh. Yes.

12 Q. And can offer it via the so-called UNE
13 platform. Isn't that right?

14 A. That is also correct.

15 Q. And there is no physical difference, is
16 there, between a UNE platform offering and a resale
17 offering?

18 A. That is true.

19 Q. Okay. Now on page 9 and 10 of your
20 direct testimony, you claim on lines 13 and 14 that
21 the FCC has found that the wholesale Broadband
22 Service offering serves the public interest and is

1 also beneficial to competition. Do you see that on
2 lines 13 and 14?

3 A. Yes.

4 Q. And you have a long quote from the FCC
5 waiver order that carries on to page 10, don't you?

6 A. Yes.

7 Q. Isn't it correct that the whole --
8 except for the last sentence in that quote, all of
9 the FCC statements there are addressing consumer
10 benefits from getting access to advanced services
11 without addressing which carrier or carriers might
12 provide those services?

13 A. With the exception of which part? I'm
14 sorry.

15 Q. The last sentence of that quote.

16 A. Let me see.

17 Q. Actually the last two sentences with the
18 parenthetical.

19 A. Well, actually I think the first
20 sentence talks about in a procompetitive manner.

21 Q. I said without specifying which carrier
22 or carriers might --

1 A. Okay. I'm sorry. That was an awful lot
2 of caveats for me to...

3 (Pause in the proceedings)

4 Okay. So lines 3 through 9 on page 10
5 would address CLECs, the sentences in lines 3
6 through 9.

7 Q. And do you see the first part of the
8 last sentence that says, I'm quoting here, "In
9 addition, SBC's proposal enables competing carriers
10 to effectively resell SBC's ADSL services"?

11 A. Yes, I do.

12 Q. Okay. And do you think resale is the
13 totality of competition contemplated by the Telecom
14 Act of '96?

15 A. No, I do not. That's one part.

16 Q. What else did the Act contemplate
17 besides resale?

18 A. Well, there are unbundling options that
19 are available for certain elements.

20 Q. So the FCC did not say in the waiver
21 order that granting the waiver by itself would
22 allow UNE-based competition, did they? They just

1 talked about resale.

2 A. Well no, it wouldn't say that.

3 Q. The only thing they spoke to is resale.

4 Isn't that correct?

5 A. As far as the Broadband Service --

6 Q. Yes.

7 A. -- is a resold option, yes.

8 Q. Okay.

9 A. It is not a UNE, so of course not. I'm
10 confused by your question.

11 Q. I'll try and make them simpler,

12 Ms. Chapman.

13 Can you turn to page 11, please? Okay.

14 Now here we're talking about market-based rates of
15 return, right? Just to paraphrase if I could, --

16 A. Starting at line 10? Is that the
17 question you're talking about?

18 Q. Yes. You're talking here about this is
19 a big investment. It only makes sense if you can
20 make a market-based rate of return. Right?

21 A. Yes. We need to be able to make a good
22 return on our investment.

1 Q. Okay. You're familiar, are you not, in
2 general with TELRIC principles?

3 A. Generally, yes.

4 Q. That's T-E-L-R-I-C. Do you recognize
5 TELRIC as the FCC's costing standard?

6 A. Yes, pricing standard.

7 Q. Would you agree with me that TELRIC
8 includes as a necessary component a market-based
9 rate of return?

10 A. I believe that TELRIC is intended to
11 provide ILECs the opportunity to receive a profit
12 on their TELRIC-priced UNEs.

13 Q. That wasn't the question. The question
14 was very specific. Isn't an explicit component of
15 TELRIC a calculation of a market-based rate of
16 return?

17 A. I'm not a TELRIC expert. I do know that
18 because it requires efficient configuration in the
19 pricing; that depending on how the actual ILEC's
20 costs really occur, they may or may not be able to
21 get a good return on their investment. If they
22 have deployed an efficient forward-looking network,

1 then they can.

2 Q. That still wasn't the question,
3 Ms. Chapman. Do you know whether or not TELRIC in
4 the calculation of costs has an explicit component
5 that calculates a market-based rate of return?

6 A. Again, I know that it allows for a
7 profit if it's an efficient network configuration.
8 I do not know whether or not it specifically says
9 anything about market based.

10 Q. Okay.

11 A. I'm not a TELRIC expert.

12 Q. Okay. Well, let's assume that it does
13 for discussion purposes.

14 A. Okay.

15 Q. Can you assume that with me?

16 A. Sure.

17 Q. Okay. Would you agree with me that your
18 company has agreed to price the wholesale Broadband
19 Service at TELRIC?

20 A. Yes, I do.

21 Q. Okay. Would you agree that UNEs are
22 suppose to be priced at TELRIC?

1 A. Yes, I will.

2 Q. Okay. So therefore from a pricing
3 perspective, would you agree that there's no
4 difference between Pronto as a UNE and Pronto
5 versus a Broadband Service with respect to the
6 market-based rate of return, since they're both
7 priced at TELRIC?

8 A. With your assumption, then, no, there
9 would not be any difference, assuming that the
10 Broadband Service and the UNE are going to be
11 configured in an identical manner so that the
12 prices would be identical. As long as the actual
13 configuration of the two did not change, the price
14 would not change because it would use the same
15 pricing methodology.

16 Q. Okay. Now at page 12 and the question
17 that begins at line 5, you're speaking here about
18 your assertion that Pronto and your wholesale
19 Broadband Service offering create new business
20 opportunities for CLECs. Do you see that?

21 A. Yes.

22 Q. Okay. And you start by saying under the

1 Project Pronto architecture, we can reach more
2 customers and so forth, and then you have an
3 assertion in not only bold but italics at the end
4 of the first sentence that says, and I'm quoting,
5 "The CLECs lose nothing but gain access to a
6 previously unavailable market." Do you see that?

7 A. Yes, I do.

8 Q. Isn't it correct that CLECs would gain
9 access to the same new customers if Project Pronto
10 is offered as a UNE rather than -- or in addition
11 to as a Broadband Service? Has the same target
12 markets available to them?

13 A. I believe so. It might depend on how
14 the UNE was offered, but I would assume it would be
15 if there was no difference, again, in the
16 architecture.

17 Q. Okay. Let's turn to page 12 and 13, and
18 the question you're asked here is do you think that
19 large network investments like Pronto have a
20 significant positive impact on the public. Do you
21 see that?

22 A. Yes.

1 Q. And you go through a lot of stuff here,
2 additional jobs, schools, telecommuting, the
3 disabled, homebound, the environment. Didn't you
4 leave something out there?

5 A. Well, I'm talking about the public here,
6 so let's see.

7 Q. Well, I didn't see mother and apple pie
8 on the list. I guess maybe I just missed it.

9 MR. BINNIG: Is that the question?

10 Q. I want to make sure the list was
11 complete. Did you point out all the possible
12 benefits in this list that you could think of?

13 A. I pointed out some of the major benefits
14 that I could think of. I did not point out every
15 possible benefit that would benefit the public.
16 I'm sure there are many others.

17 Q. Didn't you forget one key benefit here
18 and that's to SBC itself?

19 A. No, since I was talking about the
20 benefit to the public and to the consumers and not
21 to SBC in this question.

22 Q. Well, isn't SBC the real beneficiary of

1 Pronto?

2 A. There are many beneficiaries of Pronto.
3 The CLECs are beneficiaries. The public is
4 beneficiaries, and, yes, SBC is also a beneficiary.

5 Q. Isn't SBC the chief financial
6 beneficiary of Pronto?

7 A. I don't know that I could make that
8 assumption. I would think probably so since we're
9 the one investing the \$6 billion. I would hope
10 that we would see a good return on our investment,
11 but I don't know what benefits that the public as a
12 whole are going to realize as a result of Pronto.
13 It's kind of hard to quantitate that.

14 Q. Well, you've been here for the last
15 couple of days of hearing, right?

16 A. Yes, I have.

17 Q. And you've read the famed investor
18 briefing, haven't you?

19 A. Yes, I have.

20 Q. Okay. So you'll agree I take it with
21 the other witnesses that have been presented that
22 the investor briefing says that Project Pronto has

1 a net present value, meaning it pays for itself in
2 maintenance savings only.

3 A. Project Pronto as a whole, not just the
4 savings that are a result of the Broadband Service
5 --

6 Q. Sure.

7 A. -- portion of Project Pronto, and that
8 is as Project Project and Broadband Service are
9 anticipated to be rolled out today with the
10 efficient network architecture.

11 Q. Okay. I'm not trying to say just a
12 piece of it. I'm saying that the whole Project
13 Pronto \$6 billion, the investor briefing says that
14 pays for itself in maintenance savings, doesn't it?

15 A. That's correct, as I said.

16 Q. Okay. And so doesn't that mean that any
17 new revenues that might be occasioned by rolling
18 out Pronto are essentially gravy, since they
19 weren't considered in that calculation?

20 A. I don't know if you would call it -- if
21 you're talking about new revenues that are not
22 taken from somewhere else, where we would have had

1 a revenue somewhere else, then I suppose that might
2 be true.

3 Q. Okay. Now, look down the page to the
4 next question where you appear to me to be saying
5 that there should be some different treatment for
6 new network investments than the ILEC's embedded
7 voice networks. Is that what you're saying there?
8 There should be some different regulatory treatment
9 for those kinds of investments?

10 A. Yes, on an ongoing basis.

11 Q. Okay. Are you saying that you think
12 that ILECs don't have to unbundle new network
13 investments because they're new?

14 A. If the new network investment -- no, not
15 simply because they're new.

16 Q. Okay. Well, isn't it true -- you heard
17 Mr. Lube agree yesterday, didn't you, that the
18 company is -- that SBC, Ameritech, and in fact all
19 ILECs have changed their networks over time?

20 A. Yes.

21 Q. And they've done that by adding new
22 technology?

1 A. Yes.

2 Q. And you agree with that?

3 A. Yes, that's true.

4 Q. And every one of those new technology
5 roll-outs represented a new network technology,
6 didn't it?

7 A. At the time, yes, they did.

8 Q. Okay. And all of those have to be
9 unbundled right now, don't they?

10 A. I wouldn't say that all of those have to
11 be unbundled, no. Many of those do, if they meet
12 the unbundling requirements that the FCC has
13 established.

14 Q. Well, every portion or every technology
15 deployed in your current loop plant has to be
16 upgraded as a UNE right now, doesn't it?

17 MR. BINNIG: Again, I'll object. It calls for
18 a legal conclusion.

19 EXAMINER WOODS: She can answer to the extent
20 she knows.

21 A. And would you restate it again, please?

22 Q. Every component of your current loop

1 network in Illinois must be unbundled and offered
2 as a UNE. Isn't that correct?

3 A. Of our current loop network.

4 Q. Yes.

5 A. I guess it would depend on how you
6 define loop network.

7 Q. The network between the central office
8 and the customer premises, like everybody else
9 does.

10 A. Well, I'm talking about -- if you're
11 talking about the new stuff that we've put in --

12 Q. No.

13 Q. -- for Pronto, then no, because that --

14 Q. We're not talking about Pronto. I'm
15 talking about the current network --

16 A. Well, we do have --

17 Q. -- before Pronto.

18 A. We have been --

19 EXAMINER WOODS: You've got to --

20 A. -- deploying Pronto, so that's why I'm
21 saying current. When you say current, you throw me
22 off.

1 EXAMINER WOODS: Do you notice how I stop when
2 you start? Mr. Bowen, do you notice how I stop
3 when she starts?

4 MR. BOWEN: I did indeed, Your Honor.

5 EXAMINER WOODS: It's much easier for the
6 Court Reporter if we just have one person talking
7 at once.

8 MR. BOWEN: Let me clarify the question,
9 Ms. Chapman.

10 Q. By current I mean just prior to Pronto
11 deployment. Is that clear?

12 A. Yes.

13 Q. Okay. With that clarification, isn't it
14 true that your current network in Illinois, your
15 current loop network, is required to be unbundled
16 and offered as UNEs?

17 MR. BINNIG: I have the same objection, but.

18 EXAMINER WOODS: Standing ruling.

19 A. I would say definitely the majority of
20 it is. I am not certain that every possible
21 portion of it is. I would have to -- I'm not sure
22 what all the possible configurations are out there,

1 so there may be some that are not available as
2 UNEs, but I believe the vast majority are.

3 Q. Well, which part of your current loop
4 network, as I defined that term, do you think might
5 not be required to be unbundled right now? And let
6 me say, to forestall Mr. Binnig's continuing
7 objection, I will never ask you today or any other
8 today for a legal conclusion, Ms. Chapman. I want
9 you to testify based on what you understand the
10 rules and regulations and statutes to be as a
11 nonlegal person. Are we clear on that?

12 A. Yes.

13 Q. Okay. Now, which part of the loop
14 network do you think might not be required to be
15 unbundled in Illinois, the current loop network?

16 A. I do not know what high capacity loops
17 such as the -- once you get past DS1, DS3s and such
18 that are required to be offered as an unbundled
19 network element as a loop. That's what I'm not
20 certain of. If a DS3 is available as a loop in
21 Illinois, I do not recall. I believe it is, but
22 I'm just not sure when you get at some of the

1 higher level loops which ones are available in
2 Illinois and which ones are not.

3 Q. Okay. Let's turn to page 14, please,
4 and for the transcript context, at line 9 you're
5 asked the question: "Does Ameritech Illinois'
6 Broadband Service offering ease market entry for
7 CLECs?" Do you see that?

8 A. Yes, I do.

9 Q. And you assert in the first three lines
10 there that offering a wholesale Broadband Service,
11 to quote you, eliminates the need to purchase
12 DSLAMs, don't you?

13 A. When you're using the service, yes, that
14 is true.

15 Q. Well, isn't it true that Project Pronto
16 -- that there is, in effect, a ring around the
17 central office that goes out 12,000 feet as the
18 wire runs that will still be served by all copper?

19 A. In general, yes. CLECs would still be
20 able to use DSLAMs in the central office if they
21 chose to do so. I'm not saying that they would not
22 want to use DSLAMs, but they would not be required

1 to if they chose to solely use Pronto.

2 Q. Okay. Well, if a CLEC wants to serve
3 the customer base that is served by a central
4 office, they'll need to do both central
5 office-based DSLAMs and some version of Project
6 Pronto, wouldn't they?

7 A. Generally, yes, they would, or they
8 would need to collocate a DSLAM remotely if they
9 chose not to use the Pronto architecture.

10 Q. So are you clarifying this answer to say
11 that what you mean here is they could eliminate the
12 purchase of DSLAMs if they chose to go on a Pronto
13 wholesale Broadband Service resale basis only?

14 A. Yes, that would be when they would
15 totally eliminate the need.

16 Q. Okay.

17 A. In any case, they would eliminate the
18 need for many of the DSLAMs that they would
19 otherwise need to purchase.

20 Q. Okay. Would you agree that resale is
21 not the same as facilities-based competition?

22 A. Resale in and of itself?

1 Q. Right.

2 A. No, resale in and of itself is not
3 facility-based competition, although the Broadband
4 Service as it's resold you can augment -- you do
5 have some facility-based competition as well.

6 Q. Well, doesn't the Act in fact
7 distinguish between those two type of competition
8 pretty clearly?

9 A. Yes.

10 Q. Okay. And hasn't the FCC orders that
11 implement the Act done the same thing?

12 A. Yes.

13 Q. And haven't this Commission's orders
14 implementing resale on UNEs in Illinois done the
15 same thing?

16 A. I would assume so.

17 Q. Okay. Well, on page 15 of your
18 testimony in lines 1 through 3 you say your
19 wholesale Broadband Service is an offering that
20 enables facilities-based competitors to compete. I
21 thought we already agreed that wholesale Broadband
22 Service, as the FCC itself said, was resale.

1 A. It is resale. It is available to
2 facility-based competitors. The CLEC still has a
3 physical presence when they're providing the
4 service. It still has at least a portion of their
5 own network in providing the service.

6 Q. Okay. But I take it you will agree with
7 the FCC that the use of the wholesale Broadband
8 Service itself is just pure resale.

9 A. It is a resold service that a facility -
10 based provider would use.

11 Q. Okay. Page 16 --

12 EXAMINER WOODS: Excuse me, Mr. Bowen. I
13 don't understand that. Where does the CLEC's
14 facilities come into use of the Broadband Service?

15 THE WITNESS: When they're taking it back to
16 their -- again, I'm not a network person so this is
17 going to be my lay version of this.

18 EXAMINER WOODS: Okay.

19 THE WITNESS: But where they're taking the
20 Broadband Service, the signals that we hand off to
21 them, we hand that off to them at their
22 collocation, and then they're going to pass that

1 off into their network, either to the ISP or
2 however they transport the signals from that point.
3 So there is actually a physical hand-off of the
4 service to them.

5 EXAMINER WOODS: Okay.

6 Q. On page 16 of your direct, Ms. Chapman,
7 here you're quoting another FCC order. This is the
8 UNE Remand Order that you quote, and --

9 A. I'm sorry. Where are you on page 16?

10 Q. I'm in the answer to the question that
11 begins on line 9.

12 A. Okay.

13 Q. And you have a quote there from the UNE
14 Remand Order in that first paragraph, don't you?

15 A. Yes, I do.

16 Q. Do you have a rough recollection of when
17 that order was issued?

18 A. That would have been last year.

19 Q. Say April of '99? I'm sorry; April of
20 2000? Does that sound right?

21 MR. BINNIG: UNE Remand Order?

22 A. Oh, I'm sorry; not last year. I'm still

1 in 2000.

2 Q. '99?

3 A. It would have been '99.

4 Q. April of '99? Does that sound about
5 right?

6 A. That sounds about right. I don't recall
7 exactly, but I'm sure it's in here, one of my
8 references, if you want me to look it up, but.

9 MR. BOWEN: Mr. Binnig, do you happen to have
10 a copy in front of you there?

11 MR. BINNIG: I do have a copy in front of me,
12 and --

13 Q. Could you share that date with me?

14 MR. BINNIG: I can share the date with you.
15 You could also look it up and use it in your brief,
16 but it was adopted September 18, 1999, released
17 November 5, 1999.

18 MR. BOWEN: Thank you.

19 Q. Okay. Again, you have some bold and
20 italic language in that first paragraph, don't you,
21 where you quote from the FCC UNE Remand Order?

22 A. Yes, I do.

1 Q. And the point you're trying to make here
2 is that -- basically is that we don't need any more
3 UNEs. Isn't that the thrust of this answer?

4 A. No, that's not the point I'm trying to
5 make here.

6 Q. Well, the question says will the
7 creation of yet another set of unbundled network
8 elements promote certainty in the market, and your
9 answer is no. Right?

10 A. That is correct.

11 Q. Okay, and in support of that answer
12 you're quoting the FCC, and you emphasize that they
13 said that the list of UNEs that they specified in
14 that order would define the competitive landscape
15 of telecommunications markets for the foreseeable
16 future. Isn't that right?

17 A. That is true.

18 Q. Okay. Did the FCC know about the Pronto
19 architecture when they issued this order do you
20 think?

21 MR. BINNIG: Objection, lack of foundation.

22 MR. BOWEN: I'll withdraw the question.

1 Q. You were here yesterday when we went
2 through the various dates, weren't you,
3 Ms. Chapman?

4 A. Yes.

5 Q. Okay. When did the FCC's Line Sharing
6 Order come out?

7 A. Again, I think it was released either
8 the end of November or the first part of December
9 of '99.

10 Q. Okay. And when did the UNE Remand Order
11 come out?

12 A. I believe we just said it was --

13 MR. BINNIG: November 5, 1999.

14 Q. Okay. And when was the announcement of
15 Project Pronto?

16 A. In October of '99, so, yes, they would
17 have known before that date I suppose.

18 Q. And how would they have known that?

19 A. If through no other reason, through the
20 public announcement that we made. I don't know if
21 there were any ex partes or any comments filed.

22 Q. So is it your testimony that you believe

1 the FCC knew about Project Pronto and the UNE
2 Remand Order and chose not to address it?

3 A. I do not know what they chose to do or
4 not to do.

5 Q. Okay. All right.

6 Okay. Let's talk now about your
7 testimony at page 18, your direct testimony at page
8 18.

9 A. Okay.

10 Q. On the topic of nonrecurring prices.

11 A. Uh-huh.

12 Q. That's what you address on that page,
13 isn't it?

14 A. Well, recurring and nonrecurring is what
15 the question references, but.

16 Q. You do address nonrecurring prices on
17 this page, don't you, Ms. Chapman?

18 A. Okay. I thought you meant exclusively.
19 I apologize. Yes, I do.

20 Q. Okay. Now logically am I correct that
21 nonrecurring charges are either below TELRIC, equal
22 to TELRIC, or above TELRIC?

1 A. When? Are you talking about in an
2 arbitrated cost-based rate or --

3 Q. Any nonrecurring charge. Isn't it
4 logically necessary that that nonrecurring charge
5 be either below TELRIC, equal to TELRIC, or above
6 TELRIC?

7 A. Oh, one of the three, yes.

8 Q. Yes.

9 A. It's always going to be one of the
10 three.

11 Q. Okay.

12 A. I'm sorry. I misunderstood your
13 question.

14 Q. Okay. Now there's a \$10 nonrecurring
15 charge in the Covad/SBC settlement, isn't there?

16 A. I believe that's what I read in the
17 announcement, yes.

18 Q. Okay. And that applies to line shared
19 services, doesn't it?

20 A. I believe so, yes.

21 Q. Okay. So it must be in one of those
22 three states. That \$10 must be either below, equal

1 to, or above TELRIC.

2 A. Yes.

3 Q. Is that \$10 charge below TELRIC?

4 A. In Illinois? Let's see. I would need a
5 list of what our TELRIC proposed rates were to be
6 able to tell you that. It would be compared to
7 what we proposed. We proposed TELRIC rates, so if
8 it's below what we proposed, then, yes, it's below
9 TELRIC.

10 Q. So are you saying you think that it is
11 permissible for SBC to charge a price below cost?

12 A. I don't know what's permissible to do.
13 It's some --

14 Q. You've read the Act and you've read the
15 FCC orders, have you not?

16 A. I've read the parts of the Act and the
17 parts in the FCC orders that apply to the things
18 that I work with. I do not claim to be familiar
19 with every FCC order or every portion of the Act
20 governing competition.

21 Q. Well, you testify in here about whether
22 or not the \$10 price is a price that should be

1 imposed for others and not just Covad, don't you?

2 A. That is correct.

3 Q. Okay, and you testify that you aren't
4 sure that the \$10 satisfies the TELRIC pricing
5 requirement, don't you?

6 A. Oh, it is not a TELRIC rate-based price,
7 no.

8 Q. How do you know?

9 A. Because we did not use state-specific
10 TELRIC principles. We used a 13-state averaged
11 price and not a state-specific price.

12 Q. Okay.

13 A. I do know it's not TELRIC based.

14 Q. My question then is, is \$10 below, equal
15 to, or above TELRIC?

16 MR. BINNIG: Asked and answered.

17 MR. BOWEN: I don't think she's answered that
18 question, Your Honor.

19 EXAMINER WOODS: We'll try one more time.

20 A. Again, if the rate that we propose,
21 which is a TELRIC rate, is higher, then it would be
22 below TELRIC for this state.

1 Q. All right. And I take it then that you
2 or SBC thinks it's okay to price services below
3 cost.

4 A. I don't know the answer to that. Like I
5 said, this is a 13-state agreement where we
6 attempted to find a cost that -- or where we set a
7 price based on negotiations, so.

8 Q. Well, do you that on average the \$10 is
9 at or above TELRIC?

10 A. That I am not certain, and, again, I
11 think there were some gives and takes between the
12 nonrecurring and the recurring in the negotiations,
13 and also I think there were some gives and takes
14 based on the anticipated outcomes of arbitration
15 should we arbitrate in 13 different states, so I
16 think there were some gives and takes there.

17 Q. Okay. Well, then do you think given
18 those gives and takes, that on a total basis the
19 service is priced below cost to Covad?

20 A. I do not know.

21 Q. You don't know. So this Commission
22 can't conclude based on your testimony and your

1 assertions whether or not \$10 is or is not above or
2 below cost. Isn't that fair?

3 A. As I said, it's not a cost-based rate so
4 they would not be able to determine whether it was
5 cost based.

6 Q. Okay. Now, you have an example,
7 numerical example, in your direct testimony about
8 how different costs in different states when
9 averaged can result in a price that is sometimes
10 below or sometimes above cost. Right?

11 A. That's correct.

12 Q. Isn't it true that SBC is in the process
13 of deploying a uniform 13-state operation support
14 system to support line sharing?

15 A. To support line sharing? Are you
16 talking about the modification that we're doing to
17 our back-office systems?

18 Q. That's one of the things, yeah. Aren't
19 you trying to unify your operations and do it one
20 way in 13 states?

21 A. Okay. Those are two separate things.
22 The unification of our OSSs is not just for line

1 sharing. That's across-the-board, so I guess --

2 Q. I understand that, Ms. Chapman, but this
3 case is just about line sharing, so let's not talk
4 about other things.

5 A. Well, I'm not trying to split hairs, but
6 when you said to support line sharing, I thought
7 you were talking about the modification to our
8 back-office systems which is specific to line
9 sharing as opposed to our generic upgrade of our
10 entire OSSs across-the-board across all products
11 across all states, and I was trying to
12 differentiate between which of those two separate
13 things you were talking about.

14 Q. Okay. Let's start with the line sharing
15 piece.

16 A. Okay.

17 Q. Hasn't Telecordia supplied you with a
18 unified 13-state OSS upgrade to support line
19 sharing?

20 A. It's a --

21 Q. Called the Telecordia Line Sharing
22 Solution?

1 A. There is a single upgrade. The back -
2 office systems are not completely unified, so I
3 don't know if the upgrade -- I wouldn't know that
4 I'd say that it was unified across all 13 states.
5 It's a single solution that upgrades all the
6 systems which are similar throughout the regions.

7 Q. Okay. Isn't it true that the
8 nonrecurring work effort involved on line sharing
9 really consists of two categories of things? One's
10 a service order, right?

11 A. I don't believe that's part of the
12 nonrecurring charge associated with line sharing,
13 no.

14 Q. You think service orders are charged on
15 a recurring basis?

16 A. No. I think service orders are separate
17 from the HFPL nonrecurring charge. I think that's
18 a separate element that's generally contained in
19 the underlying interconnection agreement. It's not
20 part of the DSL or HFPL appendix.

21 Q. Well, let's assume that you're right.
22 Isn't it correct that a nonrecurring work effort

1 which you try to capture in your nonrecurring
2 charge is the installation of the jumpers in the
3 central office to hook up line sharing to splitters
4 and to collocation spaces?

5 A. Yes, that is the nonrecurring work that
6 is done.

7 Q. And isn't it true that you have supplied
8 -- not you personally, but Mr. Smallwood and others
9 have supplied cost studies which estimate the same
10 task times for that jumper job work in every state?

11 A. I believe that has been provided in
12 every state. If not, it would be nearly every
13 state.

14 Q. So I guess I'm -- and it's the same
15 tasks. It's the same number of jumpers in Illinois
16 as it is in Texas as it is in California. Isn't
17 that right?

18 A. Generally, yes.

19 Q. So I'm not seeing the basis for this
20 presumed wide difference of results if you're
21 studying the same task times and the same tasks in
22 Illinois as you are in Texas or California or the

1 other 13 states.

2 A. Well, frankly, the prices I listed here
3 were not suppose to be representative of any
4 particular prices. It's for illustrative purposes
5 only, as the testimony states. However, there
6 would be differences based on labor rates, based on
7 possible difference in the configurations within
8 the central offices and that sort of thing. There
9 would be some differences from state to state. I
10 do not know how much those differences would be.

11 Q. Isn't it correct you've proposed the
12 same configuration of jumpers in every state so
13 far?

14 A. Yes.

15 Q. Okay.

16 A. We would provision it the same way, but
17 whether -- I don't know if there would be any
18 differences with cable length or anything like that
19 that would affect the price. I don't know that
20 there would be. I'm just stating that it primarily
21 probably would be labor rate differences as far as
22 the actual cost for doing that work.

1 Q. Okay.

2 A. And also, there may be differences in
3 the number of manned and unmanned offices per state
4 which may impact the times associated with doing
5 that work if there's more travel involved for some
6 states than others.

7 Q. Okay.

8 A. So things like that would vary.

9 Q. Well, labor rate differences and manned
10 versus unmanned offices would not result in
11 variations of the magnitude you show on page 19
12 where one number is more than twice the other, that
13 is \$7 in State A versus \$15 in State C, would it?

14 A. I do not know if it would or not. I
15 don't know.

16 Q. Are you testifying you think it's
17 possible that labor rate differences and the
18 relative percentages of manned versus unmanned
19 offices could possibly result in a nonrecurring
20 charge for jumper jobs for line sharing that in one
21 state is more than twice another?

22 A. I think it's possible. I don't know

1 that it's likely, but, yes, I've seen the labor
2 rate differences for some of the jobs within our
3 territory. The cost of living varies considerably
4 within our 13 states.

5 Q. Okay. Let's pick up, please, your
6 rebuttal testimony, Exhibit 8.1 now, at page 6.

7 A. Page 6?

8 Q. Yes.

9 A. Okay.

10 Q. Do you have that?

11 A. Yes, I do.

12 Q. You're asked a question at the bottom of
13 that page, I'll read it for the record. The
14 question is, "Is it reasonable to assert that
15 Ameritech Illinois may suddenly withdraw the
16 Broadband Service offering upon the expiration of
17 the merger conditions?" Do you see this?

18 A. Yes, I do.

19 Q. Now you were here yesterday when I think
20 we established that the merger conditions -- one of
21 the merger conditions allows SBC to roll back in
22 separate data affiliates 42 months after the

1 effective date of the merger conditions. Isn't
2 that right?

3 A. When you say roll back in, AADS was
4 never rolled in in the first place, but, yes.

5 Q. Do I need to reask the question,
6 Ms. Chapman, or will you simply agree that
7 Ameritech Illinois could integrate AADS into itself
8 42 months after the merger conditions became
9 effective?

10 A. I don't know that they could do -- they
11 could do that without being prohibited by the
12 merger conditions. I do not know what state
13 prohibitions there may be against that. They were
14 never part of Ameritech Illinois in the first
15 place, so I don't know if there are other
16 prohibitions.

17 Q. Okay. Well, you claim that that kind of
18 integration, if I can use that term.

19 A. Sure.

20 Q. To use your term, defies logic on line
21 22 and 23, don't you?

22 A. Actually, I said that withdrawing the

1 Broadband Service after the expiration of the
2 merger conditions defies logic.

3 Q. All right. Well, you go on to say that
4 it doesn't make any sense for you to invest in
5 Project Pronto, only to turn around in the very
6 near future and cease to make use of it. Do you
7 see that on the next page?

8 A. Yes, I do.

9 Q. Now isn't that a red herring? That is,
10 isn't what's really going to happen or isn't what
11 really could happen, happen here, that Ameritech
12 Illinois could integrate AADS into itself, could
13 then offer DSL services directly at retail to the
14 same customers that AADS had been offering it to,
15 that is to use Pronto, and to kill the wholesale
16 Broadband Service? Isn't that possible?

17 A. Possible?

18 Q. Yeah.

19 A. Perhaps, yes.

20 Q. Okay. And in killing the Broadband
21 Service, they would not be not making use of the
22 Project Pronto investment in that hypothetical.

1 Isn't that correct?

2 A. They would not be fully making use of
3 that investment. They would be limiting their
4 ability to utilize it by limiting it to only one
5 provider.

6 Q. Themselves.

7 A. Yes.

8 Q. Okay. Okay. Now you reference on page
9 7 in a footnote and in the text the same ex parte
10 that Mr. Lube made a lot out of yesterday. That's
11 the CLEC ex parte to the FCC that you've attached
12 as Schedule CAC 1. Do you see that reference?

13 A. Yes, I do.

14 Q. I take it you've read this whole
15 document. Is that right?

16 A. Yes.

17 Q. Okay. Is it fair to say that this
18 document expresses significant concerns about the
19 grant of a waiver request that SBC was seeking?

20 A. Yes, I believe so.

21 Q. Is it fair to say that the text of the
22 letter tells the FCC that if it's going to go ahead

1 and do it anyway, that it needs to impose the
2 conditions attached thereto?

3 A. Yes.

4 Q. Okay. Let's turn back to those
5 conditions then. Let's look at number -- there are
6 16 of those, aren't there?

7 A. Yes.

8 Q. Now let's look at number 16, which by
9 definition is the last condition, isn't it?

10 A. Yes.

11 Q. Now isn't Condition 16 the one that
12 Mr. Lube was focusing on, that is the one that the
13 CLECs who signed this ex parte asked the FCC to
14 require SBC to make collocation space available for
15 the collocation of CLEC-owned DSLAMs?

16 A. That is one that Mr. Lube was
17 referencing, yes.

18 Q. Okay. But there are 15 more, aren't
19 there, above that?

20 A. Yes.

21 Q. Okay. And don't the other conditions
22 include asking the FCC to require SBC to offer

1 Project Pronto as UNEs?

2 A. I believe so. Yes.

3 Q. Don't they include asking the FCC to
4 require SBC to offer UNEs that include both
5 subloops and combinations of UNEs?

6 A. If you could point me to the condition.
7 I believe that's in there, but I'd like to read it
8 before I restate what you said. Could you point me
9 to the condition or would you rather me just read
10 through from the top to the bottom? It will take
11 longer.

12 Q. You don't know from just having been
13 familiar with this already?

14 A. I know that I believe that's what it
15 says, but I would rather, before I testify to what
16 it said, I'd like to read it over first.

17 Q. Well, it will speak for itself. I just
18 want to know what you recall it saying. That's
19 fine. I don't want you to sit here and read the
20 whole thing.

21 A. Okay. If you could --

22 Q. Okay. Now don't those other conditions

1 include a proposal that the FCC allow CLEC
2 ownership of the line cards?

3 A. Yes, I believe so.

4 Q. Okay. And don't those conditions ask
5 the FCC to require or specify that line sharing can
6 exist on the Project Pronto architecture?

7 A. I don't recall that one. It may be in
8 there.

9 Q. How about number 9? Isn't that what
10 that one says?

11 A. Well, it does name a line sharing UNE,
12 so, yes, I guess you could characterize it that
13 way.

14 Q. So isn't it more accurate to say that
15 Condition 16, which again deals with permission to
16 collocate CLEC-owned DSLAMs, is simply one of a
17 long list of conditions that the CLECs who filed
18 this
19 ex parte suggested that the FCC impose as a
20 condition to granting the waiver you're requesting?

21 A. Well, first of all, I would not
22 characterize 16 in the manner that you did. This

1 was actually something to require us to invest more
2 money in each of the all new RT deployment across
3 the board for all RTs to enable up to five CLECs to
4 collocate in each of the RTs, not just to allow
5 CLECs to collocate. They already had that right
6 where the ability was there. But, yes, it is one
7 of a number of conditions that the CLECs said
8 should be -- that all of those should be adopted
9 before we got the waiver.

10 A. And when you say all, I take it you
11 don't understand that list to be, FCC, please
12 choose one from this list of 16. We were
13 suggesting all of those be imposed, were we not.

14 A. Yes, you were.

15 Q. Okay. Then let's come to your
16 surrebuttal testimony, please, Exhibit 8.2.

17 A. Okay.

18 Q. Surrebuttal testimony, page 4, please,
19 Ms. Chapman. Actually this is a really long answer
20 that begins on page 2, and the question -- you're
21 responding to Ms. Murray's claim that it would be
22 rational behavior for Ameritech Illinois to create

1 impediments for CLEC customers in developing the
2 Broadband Service offering. That's what you're
3 responding to here, right?

4 A. Yes.

5 Q. Okay. And so you go on on page 2, page
6 3. I want to focus on page 4. You conclude with
7 this statement, and I'm going to read part of a
8 sentence here, "it is clear that Ameritech Illinois
9 has every incentive to assist CLECs in the
10 efficient utilization of its network and the
11 introduction of new capabilities into the network."
12 Do you see that, that portion of the sentence?

13 A. Yes.

14 Q. Well, you understand that what Rhythms
15 is asking for is not a wholesale Broadband Service
16 exclusively but is asking for Project Pronto as
17 UNEs?

18 A. I understand that's part of their
19 request, yes.

20 Q. And don't you think that Rhythms has
21 made that request so that it can introduce new
22 services to its desired end user customers?

1 A. Frankly, I don't know why -- all the
2 reasons why Rhythms has made that request. I don't
3 know that naming something a UNE suddenly gives the
4 architecture new capabilities.

5 Q. Well, do you think it's appropriate for
6 Ameritech to second guess what its customers are
7 telling it that they need?

8 A. Second guess what the customers are
9 telling it that they need?

10 Q. Right. What I mean by what is if we
11 tell you that we want Project Pronto as a UNE and
12 you say, oh, but you don't need that, take this
13 Broadband Service instead, isn't that second
14 guessing what we're asking for?

15 A. Since a UNE is something that is
16 required by law, a UNE is not something that is a
17 product offering. I don't quite understand your
18 question.

19 Q. What part isn't clear to you,
20 Ms. Chapman?

21 A. I don't understand how asking for
22 something as a UNE is in any way asking for a

1 particular product. That's asking for a legal
2 protection under the law or a legal classification
3 of part of our network.

4 Q. I thought we already established and you
5 already agreed that the Act and the FCC and the ICC
6 all contemplate a difference between resale and
7 facilities-based UNE competition. Didn't we agree
8 on that already?

9 A. Yes.

10 Q. Okay. Rhythms wants facilities-based
11 UNE access to your network. You're clear on that,
12 aren't you?

13 A. I'm clear on that, yes.

14 Q. Okay. So aren't you second guessing
15 what Rhythms is asking for by saying you don't need
16 that or I won't give that to you; I'll give you
17 something else instead?

18 A. No, I don't --

19 Q. I'll give you wholesale Broadband
20 Service instead?

21 A. No, I don't believe so, not when the
22 request is just to have it be a UNE. No, I do not

1 believe so.

2 Q. Well, but given your answer that you
3 understand that we are asking for it as UNEs, you
4 are refusing to cooperative in developing our
5 business plan as we see fit to roll it out in that
6 sense, aren't you?

7 A. I think we are refusing to take on a new
8 legal obligation that we're not required to. I
9 don't think that --

10 Q. That wasn't my question, Ms. Chapman.

11 A. Well, I'm sorry. That's the only way I
12 can answer your question.

13 Q. You can't answer the question I posed?

14 A. The question you posed is unanswerable I
15 believe, but you can try again. I'll do my best to
16 answer it.

17 Q. By declining to offer Pronto as UNEs,
18 aren't you, in fact, refusing to cooperate with
19 Rhythms' planned business roll-out of DSL services?

20 A. To the extent that you can only roll out
21 DSL services if it's called a UNE, then I suppose
22 that would be correct.

1 Q. All right. Let's turn to page 5 of the
2 surrebuttal, please.

3 A. Page 5?

4 Q. Yes. Towards the bottom of that page
5 you posit certain undescribed inefficiencies that
6 you think would be a bad idea. Is that right?

7 A. At the bottom of 5? Is that where you
8 said?

9 Q. Yes.

10 A. Yes. I refer back to Mr. Lube's and
11 Mr. Keown's testimony, but yes.

12 Q. Okay. Can you tell me specifically what
13 inefficiencies you refer to there with respect to
14 Rhythms' proposal for the offering of Project
15 Pronto as UNEs?

16 A. I will name one of the more -- the ones
17 I'm more familiar with. Again, you need to look at
18 Mr. Keown's and Mr. Lube's testimony for all the
19 different inefficiencies, but probably the most
20 inefficient part would be CLEC ownership of line
21 cards due to all the reasons that they talked about
22 yesterday, due to the greatly increased number of

1 dispatches that would be required and so forth.

2 Q. Well, are you saying that the only
3 inefficiency that should be considered in deciding
4 this issue are those that you think Ameritech
5 Illinois might suffer?

6 A. I'm saying that when we are making a
7 network investment and we are required to -- we can
8 only get a return based on an efficient network,
9 then, yes, the efficiencies that -- we have to
10 consider the efficiencies of deploying the network.
11 If we are required to deploy it in an inefficient
12 manner, then we wouldn't deploy it at all, so.

13 Q. Do you think the Commission should or
14 should not consider inefficiencies that might be
15 experienced by your CLEC customers in your
16 proposals?

17 A. I think that to the extent that -- I
18 think that's something that would be considered,
19 but not to the extent that you would modify an
20 efficient network.

21 Q. Okay. So I guess you're saying that
22 they should both be considered, both being

1 efficiencies concerning your network deployment of
2 Project Pronto and efficiencies or inefficiencies
3 of CLECs' use of that network. Is that fair?

4 A. Again, I think the overall network would
5 take precedence, but, yes, you would want to
6 consider -- obviously you'd want to consider the
7 CLECs' needs as well as the ILEC's needs.

8 Q. Okay.

9 A. And desires.

10 Q. You're familiar with the so-called
11 engineering control splice, are you not?

12 A. I'm familiar with it. I'm not a network
13 witness, but.

14 Q. Well, you testify to it on page 8,
15 don't you?

16 A. Yes. I'm familiar with it.

17 Q. Okay. Do you think using an ECS is an
18 efficient way to grant CLECs access to your loop
19 network?

20 A. I think it is a much more efficient way
21 than was previously available.

22 Q. And the previously available means would

1 be forcing CLECs to collocate their facilities at
2 every SAI? Is that right?

3 A. CLECs would never be forced to collocate
4 anywhere. CLECs would collocate at a subloop
5 accessible point, which typically would be the SAI,
6 so at any SAI that they wanted to have access to a
7 customer who was only fed by fiber, yes, that would
8 be where they would collocate.

9 Q. Okay. And to bring us back to numbers,
10 you're familiar with SBC's presentations where they
11 average numbers of RTs and SAIs, right?

12 A. Somewhat.

13 Q. Okay. Do you remember the February 15th
14 ex parte and others that say 16 to 24 RTs per
15 central office, 3 to 5 SAIs per RT? Do you
16 remember that?

17 A. I don't recall the numbers, but I can
18 take those.

19 Q. Okay. Well, let's assume that those are
20 actually what you have said numerous times to the
21 world. If you do the average of those averages,
22 isn't it correct that you take -- if we had to

1 collocate -- if we wanted to serve a central office
2 subtending area, that is the customers that are
3 served by that central office, and we had to
4 collocate it at the SAIs, on average we have to
5 collocate facilities at 80 SAIs per average central
6 office? Isn't that right?

7 A. If you were saying that you needed to
8 collocate at each of them to reach your customers,
9 then that would be correct I believe.

10 Q. Okay. And you're saying ECS is more
11 efficient because the number comes down to 20. Is
12 that what you're saying?

13 A. Was it 18 to 20 RTs is what you had said
14 earlier? Yes, that would be more efficient.

15 Q. I said 16 to 24, with an average of 20,
16 but.

17 A. Okay. Well, then yes.

18 Q. Okay. So the answer you're giving is of
19 a type that says it's relatively more efficient.

20 A. Well, it's --

21 Q. To do 20 versus 80 collocations, right?

22 A. Well, for the technology that we're

1 talking about where you need to access the copper,
2 then, yes, that is the most efficient manner of
3 collocating a DSLAM. Yes.

4 Q. Okay. Well, wouldn't it be even more
5 efficient to collocate cards that contain DSLAM
6 functionality into card slots in the NGDLC as
7 compared to the ECS solution?

8 A. No, I don't believe so when you look at
9 the total picture due to what that would do to our
10 technician force, if nothing else, due to the
11 repeated trips and that sort of thing that would be
12 -- dispatches that would be required and the great
13 increase in dispatches from what I have been told
14 by Mr. Lube and Mr. Keown.

15 Q. Okay. Now you were a witness in Texas,
16 weren't you?

17 A. In which?

18 Q. The line sharing case in Texas that we
19 just went through a month or so ago.

20 A. Yes, I was.

21 Q. Okay. And that was the spot where an
22 SBC witness estimated the cost of each ECS to be at

1 least \$15,000 and \$30,000 and more. Isn't that
2 right?

3 A. I actually don't believe -- it was at
4 least 15. I think that was an estimate that it
5 would probably be around 15. It could be more, it
6 could be less is how I remember it, but the
7 transcript would say, but I do believe it would be
8 around 15 is what was stated.

9 Q. Okay. Was that you that gave that
10 estimate or somebody else?

11 A. No, I believe it was Mark Welch, if I
12 remember, but.

13 Q. Okay. And you were there when Mr. Welch
14 said that, weren't you?

15 A. I think I was there. I have been there
16 when he said it somewhere else.

17 Q. So you think it's -- considering the
18 efficiencies of both Ameritech and CLECs, you think
19 it's more efficient to spend the cost of a DSLAM
20 times 20 and \$15,000 or more times 20 as compared
21 to collocating a line card in an NGDLC. That's a
22 more efficient solution.

1 A. Well, you wouldn't just collocate one
2 line part at each RT because you would have to have
3 -- for each of the technologies you chose, you
4 would have to have the line card for each of the
5 SAIs, and the line cards I believe - I know we're
6 going to get that number - I believe are somewhere
7 in the neighborhood of \$1,000. So in addition to
8 the technician dispatches for each of the SAI's that
9 are served by that RT, you're going to have to have
10 a separate line card for each separate CLEC for
11 each type of service used by that line card, so
12 that's going to add a lot of expense as well. It's
13 not just one line card per RT, and that's part of
14 the reason for all the dispatches is because if the
15 line card isn't in the right place or whatever,
16 there's a lot of dispatch associated with it.

17 Q. Don't you believe that SBC has made
18 decisions about Pronto deployment based on the most
19 efficient configuration possible?

20 A. Yes, I do.

21 Q. And it could have chosen, could it not,
22 to deploy separate DSLAMs in every RT, couldn't it?

1 A. We would have needed another -- a
2 different type of waiver, but I suppose that if --
3 SBC could have done that, whether it was our
4 affiliate or -- yes, that would have been an
5 option.

6 Q. Okay. It didn't choose that option, did
7 it?

8 A. No, it did not.

9 Q. It chose to deploy DSLAMs integrated on
10 to cards that plug in to NGDLC equipment, didn't
11 it?

12 A. That's correct, based on, again, there's
13 only one provider owning the card and so we don't
14 have all of the other aspects that I was talking
15 about. We also looked into, based on CLEC
16 requests, the possibility of having CLECs own the
17 line card and found it was unmanageable.

18 Q. Ms. Chapman, I'm not talking about card
19 ownership. I'm talking about separate versus
20 integrated DSLAM functionality.

21 A. Yes.

22 Q. Are we clear on that?

1 A. Yes.

2 Q. So we must be able to conclude, given
3 your answers, that the efficient configuration of
4 DSLAMs is on the cards, not as a separate piece of
5 equipment. Isn't that a fair conclusion to draw?

6 A. Not necessarily. If you're looking for
7 different types of capabilities, then it may be
8 more efficient to use a separate DSLAM. Now if
9 you're wanting to use Pronto in the manner it was
10 engineered, then, yes, this is probably the most
11 efficient manner in which to deploy it. Now if you
12 want it to do something it was not designed for,
13 then, no, that may not be the most efficient
14 manner. That I think has been our point.

15 Q. On page 9 and 10 of your surrebuttal
16 testimony.

17 A. Uh-huh.

18 Q. The question that begins at line 8,
19 you're rebutting here Ms. Murray's statement, and
20 you quote here, so I'll quote you quoting her where
21 she says, "it is clear that SBC was willing to go
22 forward with this investment even if it had to

1 unbundle the Project Pronto architecture and even
2 if it had to allow competitors to own their own
3 line cards." Do you see that in the question?

4 A. I do see that.

5 Q. Okay. Your answer that goes to the next
6 page I'm reading to rebut only the line card
7 ownership point; that is, I don't see anything in
8 here that talks about offering Pronto as UNEs. Did
9 I miss something in there?

10 A. I don't know that I specifically did
11 address the UNE portion of her statement.

12 Q. Okay. So then I guess you're agreeing
13 with Ms. Murray that SBC did go forward with Pronto
14 even if it meant that you had to unbundle the
15 Project Pronto architecture.

16 MR. BINNIG: Let me object to the question.
17 One, I think it's argumentative; two, I think it's
18 irrelevant.

19 EXAMINER WOODS: I think it does approach
20 argument, counsel. That can be argued in brief.
21 Any inferences to be drawn from her testimony can
22 be argued in brief.

1 MR. BOWEN: All right.

2 Q. The last thing I want to raise with
3 Ms. Chapman is the Covad/SBC agreement.

4 A. Okay.

5 Q. Now you're aware -- you said you read
6 the press release about that. Did I hear your
7 answer correctly?

8 A. Yes.

9 Q. Okay. The press release, if I recall,
10 does not actually specify what nonrecurring work
11 efforts are included or captured by the \$10, does
12 it?

13 A. I believe that's correct, yes.

14 Q. It just says there's a \$10 nonrecurring
15 charge that Covad will pay as part of the
16 settlement for line sharing. Right?

17 A. That's correct.

18 Q. Okay. But the actual agreement that
19 captures what the press release denounced is now
20 final. Isn't that right?

21 A. I do not know if it has been filed. I
22 don't know. I'm sorry.

1 Q. I didn't ask if it has been filed.

2 Isn't it a final agreement?

3 A. I believe it is. I am not certain. I'm
4 sorry.

5 Q. Well, let me represent to you that your
6 counsel gave us a copy of what he said was a final
7 agreement. Can you accept that for discussion
8 purposes?

9 A. Yes, I sure can.

10 Q. Okay. Now that agreement has a front
11 end and a bunch of attachments. Right?

12 A. I don't know what it has.

13 Q. Okay. Well, have you ever seen a draft
14 of any kind of that?

15 A. No, not of the Covad agreement. I was
16 not part of that.

17 MR. BOWEN: Okay. Counsel, does the company
18 deem this document to be confidential or not?

19 MR. BINNIG: I assume not since I assume this
20 final agreement is going to be filed with state
21 commissions.

22 MR. BOWEN: That was my assumption too. I

1 wanted to make sure that that was what your
2 intentions were.

3 Okay. Your Honor, we have a copy of the
4 -- I guess I'd call it the main part of the
5 agreement, 15 pages. This doesn't include the
6 attachments, which I don't think are relevant to my
7 discussion here. This is the same document that
8 you may recall we've talked about in draft form
9 before in the arbitration below.

10 EXAMINER WOODS: Okay.

11 MR. BOWEN: And section K on page 11 of this
12 final document is the one that addresses the same
13 point as before in draft form.

14 We're going to ask that this document be
15 marked as Cross Exhibit J, the document being the
16 15-page front end of the entire document, and
17 admitted. We're going to have copies made of that.
18 We don't have them sitting here right now, but
19 we'll have copies made of that.

20 EXAMINER WOODS: Mr. Binnig.

21 MR. BINNIG: Well, I guess I have a couple of
22 responses. One, I've never seen the document. I

1 don't know if the company would object to just
2 admitting a portion of the document as opposed to
3 the whole document with the schedules.

4 Two, we may have objections to the
5 relevance of the document. I want to see how it's
6 used, but the document I think on its face makes
7 clear it's a 13-state document, 13-state agreement,
8 and we are arbitrating prices for a specific state
9 here, so we have objections to the relevance on
10 this one.

11 MR. BOWEN: Well, Your Honor, that doesn't go
12 to admissibility.

13 EXAMINER WOODS: Right, and, frankly,
14 Mr. Binnig, even were I to sustain your objection,
15 I would then direct them to admit that as a Hearing
16 Examiner's exhibit, so we're going to get it in the
17 record one way or the other, whether it's over
18 objection or under direction of the Examiner.

19 MR. BINNIG: I expected that to be the case,
20 Your Honor. I'm preserving my arguments for the
21 record.

22 EXAMINER WOODS: Thank you.

1 MR. BOWEN: And just for the record, Your
2 Honor, this document in paragraph number K
3 explicitly sets out which nonrecurring charges are
4 included in the \$10. That's the basis, the chief
5 basis for the admission of this document.

6 EXAMINER WOODS: And actually before we do get
7 to the point of making it part of the record, I
8 would appreciate it if you'd give whatever you've
9 got to Mr. Binnig and let him review it for
10 completeness and see if there's anything he wants
11 to supplement with.

12 MR. BOWEN: And we have no objection to
13 admitting the entire document with attachments. It
14 struck us as being unnecessary and cumulative, but,
15 you know, if he wants the whole document in, then
16 we can do that too.

17 EXAMINER WOODS: I understand.

18 MR. BOWEN: But, again for the record,
19 Mr. Pabian, Mr. Binnig's co-counsel, gave us this
20 document, so the fact that Mr. Binnig hasn't seen
21 it I guess may not carry today since Mr. Pabian
22 obviously has.

1 to move for the admission of what was marked
2 yesterday Cross Exhibit G, which is the -- I don't
3 believe it was admitted into the record -- which is
4 the transcript portion from Ms. Chapman in Docket
5 00-0393 consisting of Ms. Chapman's cross-
6 examination in that docket and any redirect or
7 recross that occurred in that docket.

8 EXAMINER WOODS: Objections?

9 MR. BINNIG: I haven't seen it yet, but
10 assuming --

11 MS. HIGHTMAN: Actually I showed it to you
12 yesterday, if I recall.

13 MR. BINNIG: No, you showed me Lube actually.

14 MS. HIGHTMAN: Okay. I've got it all here.

15 MR. BINNIG: But assuming Ms. Feinberg's
16 representation is accurate, and I have no reason to
17 believe it's not, I have no objection.

18 EXAMINER WOODS: The document is admitted
19 without objection.

20 (Whereupon Covad Cross
21 Exhibit G was received into
22 evidence.)

1 MS. FRANCO-FEINBERG: Thank you, Your Honor.

2 CROSS EXAMINATION

3 BY MS. FRANCO-FEINBERG:

4 Q. Ms. Chapman, you were here yesterday
5 when I asked Mr. Lube some questions regarding
6 Ameritech's data requests?

7 A. Yes.

8 Q. Responses? Great. Mr. Lube indicated
9 that you might be able to help me with one of the
10 data request responses, which is the response to
11 Covad's First Set of Data Requests on Rehearing,
12 Data Request 5, which was marked Cross Exhibit D,
13 and that request asked for Ameritech -- or asked
14 Ameritech has Ameritech or SBC ever described
15 Project Pronto offerings as Broadband UNEs, and to
16 please provide a copy of all documents reviewed or
17 referred to by Ameritech or SBC to respond to this
18 request. Were you involved in preparing a response
19 to this data request, Ms. Chapman?

20 A. Actually, no. The attorneys prepared
21 that one since it asked for a legal conclusion. To
22 the second part, as far as the yes, I was involved

1 in the yes portion. The first portion of the
2 question was have we ever called it a UNE. I was
3 involved in yes, but as to why it is not considered
4 a UNE at this point, that was considered a legal
5 conclusion and was addressed by the attorneys.

6 Q. Okay. So is it Ameritech's
7 representation then that there are no documents
8 that respond to this request?

9 A. Well, we provided a document that was
10 responsive to that request.

11 Q. No, actually. There was no document
12 provided responsive to this request.

13 MR. BINNIG: Well, it refers to a document,
14 doesn't it?

15 Q. And that's the only document referred to
16 by Ameritech or SBC to respond to this request. Is
17 that Ameritech's representation?

18 A. Yes.

19 Q. I also would like you -- I don't know if
20 you're familiar or were involved in the response,
21 Ameritech's response to Covad's First Set of Data
22 Requests on Rehearing, Data Request 11, which asks

1 please confirm or deny whether Ameritech or
2 Ameritech's parent has asserted that the network
3 changes associated with fiber-fed NGDLC will reduce
4 its network cost structure, and then it request s
5 that Ameritech provide a copy of all analyses
6 performed to support its assertion, a copy of all
7 analyses or statements that provide analysis of the
8 specific sources of the related savings, and a copy
9 of all analyses or statements that estimate the
10 specific magnitude of the related short or
11 long-term savings. Were you involved in the
12 response to that data request?

13 A. No, I was not.

14 Q. Do you know who at Ameritech was?

15 A. No. I wasn't involved at all in that
16 one.

17 MS. FRANCO-FEINBERG: Can Ameritech's counsel
18 inform us who was involved in preparing that
19 response?

20 MR. BINNIG: I had no involvement in any of
21 them, so I can't, but I will pass the request on to
22 Mr. Pabian.

1 MS. FRANCO-FEINBERG: I'm sorry. You said
2 Mr. Pabian is aware?

3 MR. BINNIG: No. I said I will pass the
4 request on to Mr. Pabian.

5 MS. FRANCO-FEINBERG: Should we take a break
6 until Mr. Pabian arrives for today's hearing?

7 EXAMINER WOODS: No.

8 MS. FRANCO-FEINBERG: No?

9 EXAMINER WOODS: No, because, frankly, even if
10 we find out that these things are complete
11 fabrications, which I doubt, but, in fact, we find
12 they are, then we've got to get to the step of
13 what's next, which I assume is some kind of
14 discovery sanctions, and we're not to that point
15 yet. So unless and until we get an answer, we're
16 really just way ahead of the curve to see where
17 we're going to go with this.

18 MS. HIGHTMAN: But isn't the point to get the
19 answers so we know whether -- I mean this is the
20 only time on the record that we can find out
21 exactly what was done and determine whether
22 discovery sanctions would, in fact, be appropriate,

1 and we've asked. I mean we asked for those data
2 requests -- we filed them or served them on the
3 15th of December. Ameritech failed for whatever
4 reason, I think it was inadvertent, but they failed
5 to provide responses. The responses they gave us
6 didn't comply with the requests by designating who
7 actually worked on preparing the response and who
8 actually would be the witness to respond to the
9 request.

10 MR. BINNIG: Well, I think that what Mr.
11 Pabian committed to yesterday was to identify who
12 prepared the response or who was consulted in
13 preparing the response, and I think that
14 information is going to be provided.

15 EXAMINER WOODS: And I guess the only quibble
16 I would have with what you said is the necessity of
17 doing it on the record. I don't necessarily think
18 that that's something that has to be done on the
19 record. It can be done off the record and then the
20 appropriate motions made if we find out that there
21 has either been a dilatory response or the
22 responses are inaccurate. I don't think it

1 necessarily has to be done -- it's something that
2 has to be done as a matter of record. It can be
3 done as a matter of argument or a motion.

4 MS. FRANCO-FEINBERG: Okay. I would also, if
5 I may, Your Honor, request that if Ameritech has no
6 additional documents to produce in light of the
7 fact that their witnesses were not able to swear to
8 that under oath, that they would provide that in a
9 written, notarized statement or affidavit.

10 EXAMINER WOODS: I certainly don't have a
11 problem with that.

12 Do you understand the request? That in
13 the event --

14 MR. BINNIG: Well, I mean we'll respond to the
15 request, and there will be -- if what you're asking
16 for is some type of written certification that
17 there are no additional documents relied on or no
18 additional documents discovered, if that's what the
19 question asks for, I mean we'll respond to whatever
20 the question asks for and certify that's the full
21 and complete response as they were able to provide.

22 EXAMINER WOODS: Okay.

1 MS. FRANCO-FEINBERG: Okay. Thank you.

2 EXAMINER WOODS: Certainly.

3 MS. FRANCO-FEINBERG: In light of that, Covad
4 has no further cross-examination for Ms. Chapman.
5 Thank you.

6 EXAMINER WOODS: Thank you, Ms. Chapman.

7 (Witness excused.)

8 We'll take Mr. Riolo next.

9 MS. HIGHTMAN: I just want to make sure, I
10 just gave to the attorney for Ameritech a copy of
11 the Chapman transcript. I just want to make sure,
12 and he can double-check real quickly, that it's the
13 right one.

14 EXAMINER WOODS: Okay. Let's go off the
15 record.

16 (Whereupon at this point in
17 the proceedings an
18 off-the-record discussion
19 transpired, during which
20 time Covad Cross Exhibits A
21 and H and Rhythms Exhibits
22 7.0 and 9.0 were marked for

1 identification.)

2 EXAMINER WOODS: Mr. Riolo, you were
3 previously sworn. Is that correct?

4 MR. RIOLO: Yes, I was.

5 EXAMINER WOODS: Ready, Mr. Bowen?

6 MR. BOWEN: Yes, Your Honor.

7 EXAMINER WOODS: Let's hit it.

8 MR. BOWEN: Okay.

9 JOSEPH P. RIOLO

10 called as a witness on behalf of the Rhythms Links,
11 Inc., having been first duly sworn, was examined
12 and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. BOWEN:

15 Q. Mr. Riolo, do you have before you two
16 documents, the first of which is titled Rehearing
17 Verified Reply Statement of Joseph P. Riolo on
18 Behalf of Rhythms Links, Inc., carrying exhibit
19 number Rhythms Exhibit 7.0 and consisting of 14
20 pages?

21 THE WITNESS:

22 A. Yes, I do.

1 Q. Was that document prepared by you or
2 under your supervision and direction?

3 A. Yes, it was.

4 Q. Okay. Do you have any changes or
5 corrections to that document?

6 A. I have one change. On page 10 at line
7 19 there's a misspelling. The word "cord" should
8 be "card", C-A-R-D.

9 Q. So that phrase would be "on a multi-port
10 line card". Is that right?

11 A. That's correct.

12 Q. Okay. With that change, are the answers
13 herein true and correct to the best of your
14 information and belief?

15 A. Yes, it is.

16 Q. And if I were to ask you the questions
17 today, would your answers be the same?

18 A. Yes, they would.

19 Q. Okay. Do you also have before you a
20 document entitled Rehearing Verified Surrebuttal
21 Statement of Joseph P. Riolo on Behalf of Rhythms
22 Links, Inc.?

1 A. Yes, I do.

2 Q. And that consists of four pages and is
3 labeled Rhythms Exhibit 9.0. Is that right?

4 A. Yes, it is.

5 Q. Do you have any changes or corrections
6 to this document?

7 A. No, I do not.

8 Q. And was this prepared by you or under
9 your direction and supervision?

10 A. Yes, it was.

11 Q. And are the answers contained herein
12 true and correct to the best of your information
13 and belief?

14 A. Yes, they are.

15 Q. And if I were to ask you the questions
16 today, would your answer be the same?

17 A. Yes.

18 MR. BOWEN: Your Honor, Rhythms moves the
19 admission of 7.0 and 9.0.

20 EXAMINER WOODS: Mr. Binnig?

21 MR. BINNIG: No objection, Your Honor.

22 EXAMINER WOODS: The documents are admitted

1 without objection.

2 (Whereupon Rhythms Exhibits
3 7.0 and 9.0 were received
4 into evidence.)

5 And while we're on the subject, I
6 believe we've also had Mr. Binnig review Rhythms H.
7 Is that right?

8 MR. BOWEN: It was I. I'm sorry; it was J.

9 MS. HIGHTMAN: No, H is right. That was
10 Chapman.

11 EXAMINER WOODS: And is the copy that you were
12 provided complete to the best of your recollection?

13 MR. BINNIG: The cross-examination of Chapman
14 transcript, yes.

15 EXAMINER WOODS: Okay.

16 MR. BINNIG: While we're on the subject,
17 Rhythms Cross-Examination J, which was the excerpt
18 from the Covad/SBC amendment, 13-state amendment,
19 if you are going to make that an exhibit, Ameritech
20 would request that the entire document be made an
21 exhibit, and we will provide copies of that to the
22 parties and for the record.

1 EXAMINER WOODS: Does counsel have a complete
2 copy?

3 MR. BOWEN: We do not, Your Honor. Mr. Pabian
4 is getting his hands right now on the correct
5 attachments, and so I think Mr. Binnig has
6 volunteered to supply copies of the attachments,
7 and we have no objection to including those as part
8 of the exhibit.

9 EXAMINER WOODS: Okay.

10 MR. BOWEN: But we do have copies of the first
11 15 pages right now.

12 EXAMINER WOODS: I was going to say perhaps it
13 would just be cleaner to just withdraw this, and
14 we'll have Mr. Binnig supply the complete copy so
15 we don't have two versions rolling around. Would
16 that be satisfactory?

17 MR. BOWEN: That's fine, as long as there's no
18 question that at least the first 15 are coming in.

19 MS. HIGHTMAN: And it will still be J?

20 EXAMINER WOODS: I think so. We'll just get a
21 complete -- you were going to supply the complete
22 agreement?

1 MR. BINNIG: Yes, yes, including --

2 MR. BOWEN: The front.

3 MR. BINNIG: Yes.

4 MS. HIGHTMAN: I just wanted to give it to you
5 since you didn't have a copy of it.

6 EXAMINER WOODS: So we'll mark that as J.
7 Once we get the complete agreement, we'll mark the
8 entire agreement as J.

9 Mr. Binnig.

10 CROSS EXAMINATION

11 BY MR. BINNIG:

12 Q. Good morning, Mr. Riolo.

13 A. Good morning.

14 Q. Do you recall that when we talked in the
15 initial hearings in this case last summer, you
16 testified that you were not an economist?

17 A. I'm sorry. I was not?

18 Q. An economist.

19 A. That's correct.

20 Q. And you also testified that you didn't
21 have any kind of undergraduate or graduate degree
22 in economics or finance. Do you recall that?

1 A. I don't recall that, but I do not have
2 an undergraduate or graduate degree in economics or
3 finance.

4 Q. And you also recall that you testified
5 at the initial hearings in this case that you
6 hadn't conducted any physical review or inventory
7 of Ameritech Illinois' loop network or outside
8 plant. Do you recall that?

9 A. I don't recall that directly.
10 Obviously, I have past dealings. You're aware of
11 the fact that I had worked in the plant at a point
12 in time.

13 Q. I'm talking about Ameritech Illinois.

14 A. Ameritech Illinois, I have not worked as
15 Ameritech Illinois.

16 Q. Okay. I want to first turn to your
17 Verified Reply Statement, which is Rhythms Exhibit
18 7.0. If you could turn to page 4, please, at lines
19 20 to 21 you refer to the telecommunications
20 industry's ANSI T1E1 committee. Do you see that?

21 A. Yes, I do.

22 Q. I think you also refer to them in your

1 rebuttal testimony. Isn't it correct that the TlEl
2 committee is not part of ANSI?

3 A. It's a subcommittee that reports to the
4 American National Standard.

5 Q. Isn't the TlEl committee in fact a
6 committee of an industry organization known as the
7 Alliance for Telecommunications Industry Solutions,
8 ATIS?

9 A. It's been some time since I was
10 personally involved in the TlEl committee. I don't
11 know that directly at this point in time.

12 Q. So is it fair to say we can both agree
13 this TlEl committee exists, but you don't know
14 whether it's part of ANSI or part of ATIS.

15 A. It's my understanding that they will
16 report to ANSI for the purposes of standardizing
17 those areas that they are investigating.

18 Q. Okay. You do know that ATIS and ANSI
19 are separate organizations?

20 A. Yes.

21 Q. Let's move to page 7 of your testimony,
22 of the direct, and I want to refer you to lines 8

1 through 9 of your testimony here where you assert
2 that the long-run survival of competition and
3 consumer choice in Illinois may well rest on the
4 CLECs' ability to offer and deploy advanced
5 services. Do you see that?

6 A. Yes, I do.

7 Q. Now in making this assertion, you
8 haven't conducted any market studies or surveys of
9 end user customers. Is that correct?

10 A. I haven't personally. That's correct.

11 Q. And you haven't performed any
12 quantitative analysis of the cost structure or
13 revenue potential of any CLEC. Is that correct?

14 A. I haven't personally.

15 Q. And you also haven't performed any
16 economic analysis of other advanced services
17 technologies, such as cable modem services,
18 wireless services, or broadband satellite services.
19 Is that right?

20 A. I have not personally, no.

21 Q. Moving down slightly on page 7 here, in
22 the next sentence, at the end of the sentence you

1 state that Project Pronto is slated to roll out
2 very quickly and on a large scale. Do you see
3 that?

4 A. Yes, I do.

5 Q. Sitting here today, Mr. Riolo, can you
6 tell me what the current deployment schedule for
7 Project Pronto is in Illinois?

8 A. Just that it's ongoing at this point in
9 time and is rolling out.

10 Q. But you can't tell me any specific dates
11 or any specific areas within Ameritech Illinois'
12 service territory for planned deployment?

13 A. Not on a piece-part-by-piece-part basis.

14 Q. Let's move now to page 12 of your direct
15 testimony. I'm looking at lines 2 through 4 on
16 page 12 where you indicate that while proprietary
17 interfaces and copyright protection afford
18 manufacturers legal protection against
19 infringement, the potential for cross-licensing
20 exists. Do you see that?

21 A. Yes, I do.

22 Q. Isn't it correct that as of today,

1 Mr. Riolo, no such cross-licensing agreements exist
2 for NGDLC line cards?

3 A. I could not attest to that being the
4 case.

5 Q. But you don't know of any.

6 A. Do I know of any? I'd like to say that
7 I have at least read on the web that there are
8 agreements between manufacturers such as Coppermax,
9 Cisco, and I'd like to say the NGDLC company was
10 Reltec.

11 Q. Can you identify for me as you sit here
12 today what website you're referring to that you
13 recall?

14 A. I couldn't tell you off the top of my
15 head.

16 MR. BINNIG: Okay. I'd like as an
17 on-the-record data request the specific website or
18 web page that Mr. Riolo is referring to.

19 EXAMINER WOODS: Will you provided it?

20 MR. BOWEN: Yes, Your Honor.

21 EXAMINER WOODS: Thank you.

22 Q. That's the only instance that you're

1 aware of where you think there's some
2 cross-licensing agreements between an NGDLC line
3 card manufacturer and another vendor?

4 A. I have investigated, obviously, what's
5 public record in terms of NGDLCs, and in the course
6 of that investigation I have seen documents on the
7 web which would indicate that there are agreements
8 between companies.

9 Q. As you sit here today, that's the only
10 instance that you can identify. Is that right?

11 A. In NGDLC? I'm not certain if agreements
12 still exist between Reltec and Lucent. At a point
13 in time I knew it did exist. I don't know if it
14 still does.

15 Q. So, again, my question, Mr. Riolo, as
16 you sit here today, the only instance that you can
17 identify that you are aware of of a cross-licensing
18 agreement by an NGDLC line card manufacturer and
19 another vendor is the instance you identified
20 involving Reltec and Cisco, and I believe you
21 mentioned --

22 A. Coppermax.

1 Q. Coppermax.

2 A. To the best of my recollection, that
3 would be it. If it proves to be otherwise, I'll
4 produce the document.

5 Q. As you sit here today, can you identify
6 for me any document generated or produced by either
7 Alcatel or Advanced Fiber Communications where they
8 have indicated a willingness or a plan to cross-
9 license their NGDLC line card technology with other
10 vendors?

11 A. As I sit here today, no, I could not.

12 Q. Let's move to your surrebuttal, and I'd
13 like you to turn to page 2 of your surrebuttal,
14 beginning at line 9. You've got a paragraph here,
15 and at lines 12 and 13 you begin talking about the
16 functions performed by OSP engineering feeder
17 administrators. Do you see that?

18 A. Yes, I do.

19 Q. And OSP stands for outside plant. Is
20 that correct?

21 A. Yes, it does.

22 Q. And would you agree, Mr. Riolo, that in

1 performing their job functions that OSP engineering
2 feeder administrators make certain capacity
3 utilization assumptions about the network, that is
4 how efficiently the network is being utilized?

5 A. Well, they certainly look at the fill
6 levels as one of the indicators.

7 Q. That's what I was going to -- and I
8 guess the colloquial language used by outside plant
9 engineers, one of the things they look at is what
10 they refer to as fill factors. Is that right?

11 A. That's correct.

12 Q. And fill factors is an assumption of the
13 utilization of the particular facilities being
14 looked at. Is that right?

15 A. In some sense, yes.

16 Q. And in performing their job function,
17 OSP engineering feeder administrators also make
18 assumptions about available spare capacity in the
19 network, don't they?

20 A. Well, the spare capacity is the
21 antithesis of the fill, and so if you fill at 75
22 percent, there's 25 percent spare in general terms.

1 Q. And OSP engineering feeder
2 administrators in performing their job functions
3 also make assumptions about the demand on the
4 particular facilities that are being used. Isn't
5 that right?

6 A. Again, they look at things typically as
7 growth and they couple that with forecasts. The
8 forecasts are not typically generated by the
9 outside plant engineer but rather the marketing
10 organization.

11 Q. Okay, and in performing their job
12 functions and looking at these factors, wouldn't
13 you agree that OSP engineering feeder
14 administrators try to design a network that most
15 efficiently serves the anticipated demand?

16 A. Well, actually, the outside plant
17 engineer, in terms of a feeder, designs the plant
18 to enable it to serve the present demand, if it is
19 at exhaust at that point, plus some modicum of
20 spare capacity. Typically in the copper world it
21 was three to five years' worth of growth.

22 Q. And that type of planning that you refer

1 to in terms of spare capacity, that was considered
2 the most efficient way to design feeder plant
3 network, wasn't it?

4 A. That was considered an efficient design,
5 and, again, in the copper world.

6 MR. BINNIG: I think that's all I have, Your
7 Honor.

8 EXAMINATION

9 BY EXAMINER WOODS:

10 Q. Mr. Riolo, we talked earlier I think off
11 the record about this idea of CLEC line cards being
12 inserted into the ILEC architecture.

13 A. Yes.

14 Q. And I think in that off-the-record
15 discussion you agreed that that should only occur
16 when the line cards have been designed to fit
17 within the slots in which they are to be put.
18 Right? There should be no reengineering of the
19 actual shelves or anything to accommodate new line
20 cards. Correct?

21 A. That's correct.

22 Q. During cross-examination of some of the

1 Ameritech witnesses I believe by Mr. Bowen, there
2 was some questions concerning the difference
3 between physical and virtual collocation. Are you
4 familiar with those two terms?

5 A. Yes, I am.

6 Q. Just generally?

7 A. Yes.

8 Q. And I believe Mr. Bowen's
9 representations were that his clients would be
10 satisfied with virtual collocation.

11 A. Yes.

12 Q. Okay. Can you just kind of walk me
13 through the way you understand that would work, in
14 case the Commission would order that?

15 A. In virtual collocation, typically the
16 CLEC would purchase some material and give
17 ownership to the ILEC for some nominal fee,
18 typically a dollar. It would then be a matter of
19 the ILEC installing and/or maintaining that
20 particular piece of equipment that resides in the
21 ILEC's space.

22 Q. So once the equipment is purchased and

1 turned over, the ILEC has complete control over the
2 handling and installation and maintenance of the
3 entire -- as if it's their piece of equipment.

4 A. Typically. It's a matter of agreement.
5 Not always is it a matter that they will maintain
6 it, but typically it's in an ILEC's space that is
7 denied access to the CLECs, so in many instances
8 they will maintain it as well.

9 Q. Okay. And it may be a little outside
10 the parameters of this specific docket, but since
11 I've got the authority to do so, I'm going to ask
12 you these questions too. That would normally be a
13 collocation issue. Is that correct? I mean when
14 somebody goes in and puts a piece of equipment into
15 somebody else's architecture, that's normally what
16 we think of as collocation because I've got
17 something that wasn't mine and now all of a sudden
18 it's sitting in my shop.

19 A. In this day and age where certainly
20 collocation is at the fore, that's certainly the
21 case.

22 Q. And generally --

1 A. There have been instances in the past,
2 for example, at the time of divestiture where we
3 had a mix of AT&T equipment and what became the
4 RBOC equipment in spaces, so it wasn't necessarily
5 coined as collocation, so there might be an
6 exception to what you initially said.

7 Q. Okay. Would you envision this as being
8 a collocation issue?

9 A. I would say typically it would be a
10 collocation issue.

11 Q. And generally in collocation, the person
12 who accepts the equipment is entitled to be
13 compensated for the expense associated with
14 accepting and maintaining that equipment. Is that
15 also correct?

16 A. Yes, as part of the agreement.

17 Q. As part of the interconnection
18 agreement.

19 A. As part of the agreement that the ILEC
20 and the CLEC would come to in order to effectuate
21 that.

22 Q. And I assume you would have no objection

1 to in this case Ameritech being compensated for
2 whatever costs were associated with that virtual
3 collocation in this case. Is that correct?

4 A. It's difficult to say I wouldn't have a
5 problem with the costs associated without having
6 seen what they typically would like to charge. It
7 has been my experience that the charges they
8 attempt to levy on CLECs are exorbitant.

9 Q. Well, the question was not whether or
10 not any compensation, but they should be
11 compensated for whatever additional and reasonable
12 costs the Commission finds is appropriate in terms
13 of whatever additional costs are imposed upon them
14 for accepting that equipment into their line.
15 Isn't that a fair statement?

16 A. I would think that's a fair statement.

17 EXAMINER WOODS: Mr. Bowen?

18 MR. BOWEN: I have some --

19 EXAMINER WOODS: I'm sorry. Mr. Binnig, any
20 additional cross?

21 MR. BINNIG: I do have one question.

22 EXAMINER WOODS: Okay.

1 CROSS EXAMINATION

2 BY MR. BINNIG:

3 Q. Isn't it a fact, Mr. Riolo, that in
4 Illinois, in Ameritech Illinois' serving territory,
5 that virtual collocation arrangements in that
6 serving area provide that the collocator retains
7 ownership of the equipment; that title is not
8 passed to Ameritech Illinois?

9 A. Again, it is a matter of how the
10 agreements are reached, and typically, as I say,
11 maintenance may or may not be part of that. I
12 couldn't speak to the fact that in all cases in
13 Illinois, for example, that ownership is not passed
14 over.

15 Q. Okay. So you don't know how it's done
16 in Illinois is basically your answer. Isn't that
17 right?

18 A. That's correct.

19 MR. BINNIG: Okay.

20 MR. BOWEN: Could I have just a couple minutes
21 off the record, Your Honor?

22 EXAMINER WOODS: Sure.

1 (Whereupon a short recess
2 was taken.)

3 EXAMINER WOODS: Okay. Back on the record.

4 REDIRECT EXAMINATION

5 BY MR. BOWEN:

6 Q. Mr. Riolo, do you recall a discussion
7 you had with Mr. Binnig concerning cross-licensing
8 issues, referencing you back to your Rehearing
9 Verified Reply Statement at page 12?

10 A. Yes, I do.

11 Q. Okay. And I think you testified that
12 you weren't aware of any cross-licensing agreements
13 between Alcatel or AFC and a third party for card
14 cross-licensing. Is that what you said?

15 A. Yes, it is.

16 Q. Would you expect there to be such
17 agreements?

18 A. No. Actually, as I've explained in my
19 testimony, NGDLC manufacturers, especially Alcatel,
20 given its position as SBC's primary NGDLC vendor in
21 the \$6 billion network upgrade, would have a
22 natural business incentive to become or remain the

1 monopoly provider of NGDLC equipment, including the
2 line cards.

3 Q. Okay. Now if some regulatory body or
4 court or whatever with proper jurisdiction, let's
5 assume it could be the FCC or the ICC, were to
6 require such cross-licensing, do you think that
7 Alcatel could comply with that kind of requirement?

8 A. Well, I'm certain that it's within their
9 purview to do it. Obviously, they have copyrights,
10 but if they're being directed, there would be some
11 business incentive I assume to cross-license
12 someone to get into that business.

13 Q. Okay. And if such cross-licensing were
14 mandated and Alcatel complied with that mandate, do
15 you think other manufacturers could, in fact,
16 produce cards that could work in Alcatel's or AFC's
17 NGDLC equipment?

18 A. Certainly.

19 Q. Okay.

20 A. There's ample I think opportunity for
21 equipment manufacturers to get into new businesses,
22 and this certainly isn't anything terribly exotic.

1 Q. Okay. Now you discussed planning
2 horizons with Mr. Binnig as well for feeder plant.
3 Do you recall that?

4 A. Yes, I do.

5 Q. Okay. And your answer focused on copper
6 feeder reinforcement practices, didn't it?

7 A. Yes, it did.

8 Q. I'd like you to tell us with respect to
9 fiber feeder, what is the normal practice in terms
10 of reinforcements for that kind of feeder?

11 MR. BINNIG: I'll object. It's beyond the
12 scope of my cross. It's beyond the scope of his
13 testimony. His testimony talks only about copper
14 feeder.

15 MR. BOWEN: Your Honor, the question that
16 Mr. Binnig asked was general. The answer was
17 specific, and given that we have both copper and
18 fiber feeder in Project Pronto in front of us right
19 now in this rehearing, it's entirely appropriate to
20 ask him what the answer is as to fiber feeder.

21 EXAMINER WOODS: What line of questioning does
22 this go to?

1 MR. BOWEN: Mr. Binnig asked what the normal
2 reinforcement schedules were for feeder plant.

3 MR. BINNIG: I didn't ask about reinforcement
4 schedules at all.

5 MR. BOWEN: Well, Mr. Binnig asked about spare
6 capacity and efficient practices for building
7 feeder plant.

8 MR. BINNIG: Copper feeder plant.

9 MR. BOWEN: Pardon me?

10 MR. BINNIG: Copper feeder plant.

11 MR. BOWEN: I believe his question was not
12 specific to copper, Your Honor.

13 EXAMINER WOODS: We'll take a little bit of
14 it.

15 MR. BOWEN: Okay.

16 Q. Mr. Riolo, what is the normal practice
17 for reinforcement of fiber feeder plant?

18 A. The fiber feeder generally is a much
19 shorter time frame. The reason is that it
20 typically doesn't take a great deal of time to
21 install additional capacity on fiber feeder plant.

22 In the copper world you have to

1 physically connect each of the wires in the sheath
2 section by section, and those sections typically
3 are only a thousand feet long, so it's a very labor
4 intensive type of operation when you're building
5 copper feeder plant and hence the reason why the
6 planning horizon is somewhat longer.

7 In the fiber feeder world it's not
8 unusual to be able to place 20,000 feet of fiber
9 all in one pull so that you don't have to incur any
10 splicing along the way, so you pull it end to end,
11 and then the capacity issue is handled by the
12 electronics. So you could either MUX up the
13 equipment, if you ever get to the exhaust point of
14 the MUX, or typically what happens, you run out of
15 line card capacity, which is the equivalent of the
16 copper world. So what an outside plant feeder
17 administrator typically would do would be to
18 install no more than six months' worth of growth
19 line cards at a location, and when that exhausts,
20 it's just a matter of sending someone out to plug
21 in some more. If you're not experiencing any great
22 amount of growth in a route, again, an outside

1 plant engineer would dictate that very few line
2 cards would be additionally installed to handle any
3 growth operation, and if you need additional
4 growth, you send someone out on what we used to
5 call a bunny run, someone that typically was a
6 light-duty person that had maybe an injury or
7 something, and just to keep them busy you give them
8 a bunch of cards and send them to locations, and
9 they would plug it in and add capacity.

10 Q. The final area, do you recall questions
11 from the bench concerning collocation and possible
12 compensation for that?

13 A. Yes, I do.

14 MR. BOWEN: Let me just represent, Your Honor,
15 just to clarify, I certainly did ask questions
16 about virtual collocation, but, for the record,
17 Rhythms wants both options available. I want to
18 make that clear so there's no misunderstanding in
19 the record about what Rhythms would be asking for.
20 The focus of most of my questions was on virtual.

21 Q. Let's focus on that, Mr. Riolo, on the
22 virtual collocation question, and I want you to

1 keep in mind the kinds of bases for charge for
2 virtual collocation in a central office type
3 environment and then tell us if you applied those
4 same kinds of principles to an RT type collocation,
5 by which I mean not collocation of a separate DSLAM
6 but the collocation of a CLEC line card in a
7 virtual configuration. What kinds, if any, of
8 charges might be looked at by the Commission if it
9 wanted to look at those kinds of possible charges?

10 A. Again, when you typically virtually
11 collocate in a central office, you're most
12 concerned with the square footage of additional
13 space that you're going to occupy, so you pay a
14 charge for the square feet that you effectively are
15 going to be using, and you'll pay for some
16 environmentals, you know, such as power.

17 If you were just looking at the virtual
18 collocation of a card, it doesn't really occupy any
19 additional space because the channel bank
20 assemblies are already mounted in a rack so you're
21 just occupying something that's already there, so
22 in terms of additional space, I would be hard

1 pressed to think that there would be a charge
2 associated with that.

3 The power arrangement, I guess the card
4 does use some power, but recognize that at a
5 remote, the remote itself is constructed and
6 designed for a totally filled-to-capacity type of
7 situation in terms of power, so that while you're
8 using some power, the power is available, so it
9 doesn't require any additional construction in
10 almost all cases. So I guess there might be a
11 nominal charge for the additional power that a card
12 might use in terms of virtual collocation.

13 MR. BOWEN: Okay. Thank you. That's all I
14 have, Your Honor.

15 MR. BINNIG: I have a couple.

16 RE CROSS EXAMINATION

17 BY MR. BINNIG:

18 Q. Mr. Riolo, you left NYNEX in 1993. Is
19 that correct?

20 A. Actually in '92.

21 Q. '92? At that time, NYNEX had not
22 deployed any type of NGDLC system that was

1 providing ADSL service, had it?

2 MR. BOWEN: Your Honor, I'm objecting. This
3 was not covered in redirect, Your Honor.

4 EXAMINER WOODS: I think these are
5 foundational questions, as I understand them.

6 MR. BOWEN: Okay. I'll withdraw it.

7 EXAMINER WOODS: Go ahead.

8 A. Certainly not ADSL type of NGDLC.

9 Q. So the fiber feeder line card trips that
10 you talked about, the bunny runs, those were not in
11 connection with an NGDLC system providing ADSL
12 service, were they?

13 A. Not with DSL service.

14 Q. That's if --

15 A. But recognize that any Litespan, for
16 example, you know, NGDLC type of arrangement, there
17 are a variety of cards, be they ADSL or be they
18 ISDN or POTS or specials. There are probably 15,
19 20 different varieties of cards.

20 Q. I understand that. My question,
21 Mr. Riolo, was, the bunny runs that you're talking
22 about did not involve an ADSL configured NGDLC

1 system. Isn't that right?

2 A. That is correct.

3 Q. Now, Mr. Bowen also asked you a question
4 about Alcatel or other manufacturers being forced
5 to engage in cross-licensing. Is it your testimony
6 that the FCC or any state regulatory commission has
7 authority to order an equipment manufacturer to
8 cross-license their equipment?

9 A. Again, I'm not a lawyer. I'm an
10 engineer, so I can tell you that if some regulatory
11 body was to come out with some kind of edict or
12 regulatory policy that would address that issue,
13 from a technical and an engineering point of view
14 and a business point of view, I don't see why a
15 manufacturer would not cross-license. Obviously
16 they are protected. They are copyrighted as far as
17 their software, but, you know, I'll just go back to
18 the analogy of the GR-303 interface with switches.
19 That was something that the industry kind of forced
20 on to the equipment manufacturers and opened that
21 interface so that we could have a variety of DLCs
22 talk to a variety of switches. In the recent past

1 that was not the case. A Lucent switch talked to a
2 Lucent DLC, and a Nortel switch talked to a Nortel
3 DLC, but that interface got opened up because there
4 was pressure exerted by the industry.

5 Right now the ILECs and Alcatel have a
6 relatively captive market, so there's strong
7 business incentive there between the two of them I
8 would think not to open it, so, you know, maybe
9 some guidance has to be directed from regulatory
10 bodies.

11 Q. Well, I just want to get this straight,
12 and my question was very specific, Mr. Riolo. Is
13 it your testimony that the FCC or this state -- any
14 state regulatory commission has the authority to
15 order an equipment manufacturer to cross-license
16 its equipment?

17 MR. BOWEN: Objection, Your Honor. The
18 witness has already testified that he's not a
19 lawyer, and he doesn't know the answer to that
20 question.

21 MR. BINNIG: I'm asking for his understanding.

22 EXAMINER WOODS: And frankly, I've never heard

1 him say that he doesn't know the answer to that
2 question. Do you know the answer to that question,
3 Mr. Riolo.

4 A. From a legal point of view, I wouldn't
5 know.

6 Q. From a nonlegal point of view.

7 A. I would think that pressure could be
8 exerted.

9 Q. That's not my question, Mr. Riolo.
10 Okay. My question is, is it your testimony that
11 the FCC or any state regulatory commission has the
12 authority to order Alcatel to cross-license -- or
13 any equipment vendor to cross-license its
14 equipment?

15 MR. BOWEN: I still object, Your Honor. That
16 question necessarily calls for a legal conclusion
17 because authority is a question of legal
18 conclusion.

19 MR. BINNIG: No more than any of Mr. Bowen's
20 questions along these lines.

21 EXAMINER WOODS: We have people testify as to
22 their beliefs as to legal matters all the time. If

1 you know the answer, Mr. Riolo, I suggest at this
2 point that you please state it.

3 A. I do not know if they have the
4 authority.

5 MR. BINNIG: Okay.

6 Q. Now, the one instance that you
7 identified referring to the GR-303 situation, okay,
8 there was no FCC or state regulatory commission
9 order that told those equipment vendors to develop
10 GR-303, was there?

11 A. Not to the best of my recollection.

12 MR. BINNIG: Nothing further, Your Honor.

13 EXAMINER WOODS: Mr. Bowen?

14 MR. BOWEN: Nothing further, Your Honor.

15 Thank you.

16 (Witness excused.)

17 EXAMINER WOODS: Let's go off the record
18 briefly and discuss scheduling.

19 (Whereupon at this point in
20 the proceedings an
21 off-the-record discussion
22 transpired, during which

1 time Rhythms Exhibits 4.0,
2 4.0P, 6.0, and 8.0 were
3 marked for identification.)

4 EXAMINER WOODS: Let's go back on the record.
5 Ms. Hightman.

6 MS. HIGHTMAN: I have the prefiled testimony
7 of Terry Murray that I want to put into the record
8 pursuant to the agreement that we had with
9 Ameritech regarding that she did not need to show
10 up to appear to put the testimony in the record.

11 Everything has been pre-identified.
12 Rhythms Exhibit 4.0 is her Verified Statement on
13 Rehearing. There's a confidential version of it,
14 so I assume we should mark it 4.0 as the public and
15 4.0P as the private, or I mean the confidential.

16 EXAMINER WOODS: Yes.

17 MS. HIGHTMAN: Her Verified Rebuttal Statement
18 was mismarked as far as the exhibit number. We're
19 marking it as Rhythms Exhibit 6.0, and then her
20 Surrebuttal Statement is marked as Rhythms Exhibit
21 8.0, and I therefore move for the admission of
22 Rhythms Exhibits 4.0, 4.0P, 6.0, and 8.0.

1 EXAMINER WOODS: Mr. Binnig?

2 MR. BINNIG: No objection, Your Honor.

3 EXAMINER WOODS: The documents are admitted
4 without objection.

5 (Whereupon Rhythms Exhibit s
6 4.0, 4.0P, 6.0, and 8.0 were
7 received into evidence.)

8 MS. HIGHTMAN: Thank you.

9 EXAMINER WOODS: The record will also reflect
10 discussions had concerning further scheduling. The
11 parties have either agreed or I have imposed,
12 depending on the parties' predilection, the
13 following schedule:

14 We're going to have an initial round of
15 briefs filed by 5:00 p.m. on Tuesday, January 16th.
16 We've scheduled this matter for an oral argument to
17 begin at 1:00 p.m. on January 18th. The parties
18 will then be submitting -- any party who wishes to
19 will then be submitting draft orders on January
20 19th, and I would endeavor to be serving the
21 Hearing Examiner's proposed order on Monday,
22 January 22nd, and I would anticipate the schedule

1 for exceptions and replies to be exceptions due
2 January 26th and replies due January 30th. In the
3 event that the proposed order comes out somewhat
4 later, the dates would probably slip accordingly.

5 Anything further? I'm sorry?

6 MS. HIGHTMAN: Nothing.

7 EXAMINER WOODS: Mr. Binnig?

8 MR. BINNIG: Nothing further at this time,
9 Your Honor.

10 EXAMINER WOODS: All right. Because the oral
11 argument will be transcribed, what I will be doing
12 then is continuing this cause to 1:00 p.m., January
13 18, 2001, in Springfield, Illinois, for oral
14 argument. Thank you all very much.

15 MS. HIGHTMAN: Thank you.

16 MR. BOWEN: Thank you, Your Honor.

17 (Whereupon the case was
18 continued to January 18,
19 2001, at 1:00 p.m. in
20 Springfield, Illinois.)

21

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1 STATE OF ILLINOIS)
)SS
2 COUNTY OF SANGAMON)

3 CASE NO.: 00-0312 & 00-0313 ON REHEARING

4 TITLE: COVAD COMMUNICATIONS COMPANY

5 RHYTHMS LINKS, INC.

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CERTIFICATE OF REPORTER

10 I, Cheryl A. Davis, do hereby certify that I
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12 Reporting Company of Chicago, Illinois; that I
13 reported in shorthand the evidence taken and
14 proceedings had on the hearing on the
15 above-entitled case on the 5th day of January,
16 2001; that the foregoing pages are a true and
17 correct transcript of my shorthand notes so taken
18 as aforesaid and contain all of the proceedings
19 directed by the Commission or other persons
20 authorized by it to conduct the said hearing to be
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16 Dated at Springfield, Illinois, on this 6th
17 day of January, A.D., 2001.

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